



## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **14 CFR Parts 234, 244, 250, 255, 256, 257, 259, and 399**

**[Docket No. DOT-OST-2014-0056]**

**RIN 2105-AE11**

### **Enhancing Airline Passenger Protections III**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is issuing a third “Enhancing Airline Passenger Protections” final rule to enhance protections for air travelers and to improve the air travel environment as follows: expanding the pool of reporting carriers for service quality data; requiring reporting carriers to include service quality data for their domestic scheduled flights operated by their code-share partners; enhancing the Department’s code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents must disclose any code-share arrangements on their websites on the first display presented in response to a search of a requested itinerary for each itinerary involving a code-share operation; and prohibiting undisclosed biasing based on carrier identity by carriers and ticket agents in any electronic displays of the fare, schedule or availability information of multiple carriers. The amendments to the reporting requirements in this rule will ensure that the Department obtains and provides to the public expanded and enhanced service quality data from the airlines. The provision to strengthen the Department’s code-share disclosure rule will also enhance air travel consumer protection. Additionally, this final rule corrects certain drafting errors and makes minor changes

to the Department's second Enhancing Airline Passenger Protections rule to better reflect the Department's intent. Other topics covered by the proposed rule that are not addressed by this final rule will be addressed in two separate rulemakings. Specifically, the Department will be issuing a Supplemental Notice of Proposed Rulemaking (SNPRM) to seek additional information on the disclosure of fees for basic ancillary services to consumers at all points of sale. The remaining topics discussed in the 2014 notice of proposed rulemaking (e.g., customer service commitments by large ticket agents, prohibition on post-purchase price increases for ancillary services) will be addressed in another final rule that the Department plans to issue at a later date.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Clereece Kroha or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), clereece.kroha@dot.gov (e-mail) and blane.workie@dot.gov.

**SUPPLEMENTARY INFORMATION:**

*Executive Summary*

*(1) Purpose of the Regulatory Action*

This final rule enhances the performance quality information collected by the Department and made available to the public by expanding the reporting carrier pool and requiring performance data for code-share flights marketed by reporting carriers. These actions will ensure that smaller U.S. carriers' performance records are included in the monthly Air Travel Consumer Reports and that code-share flights' performance data will be reflected in their marketing carriers' records and rankings. This rule will also enhance information disclosure to

air travel consumers by codifying the statutory requirement regarding disclosing code-share arrangements in online schedule displays, and prohibiting undisclosed bias when displaying air travel itinerary search results by carriers and ticket agents. These actions are taken under the statutory authorities for the Department to collect and collate transportation information that will contribute to the improvement of the transportation system of the United States (49 U.S.C. 329 and sections 41708 and 41709), and to prohibit unfair and deceptive practices and unfair methods of competition in the provision of air transportation (49 U.S.C. 41712).

*(2) Summary of Major Provisions*

In this final rule, the Department amends 14 CFR Part 234 to require U.S. carriers that account for at least 0.5 percent of the domestic scheduled passenger revenue to file reports for the on-time performance and mishandled baggage for their flights and to post the on-time performance of their flights on their websites if they have websites marketing air transportation to the public. This is an expansion of the reporting carrier pool from its previous threshold of at least one percent of the domestic scheduled passenger revenue. Similarly, an amendment to 14 CFR Part 250 will expand the reporting carrier pool for reporting oversales data.

In addition, this rule amends Parts 234 and 250 to require all reporting carriers that market code-share flights operated by another carrier to file separate reports for on-time performance, mishandled baggage, and oversales data for those code-share flights.

With respect to disclosing code-share arrangements, this rule amends 14 CFR Part 257 to codify a statutory requirement that code-share arrangements in online itinerary search results must be disclosed on the first display following the search and in a format that is easily accessible to consumers.

Finally, this rule adds 14 CFR Part 256 that prohibits undisclosed bias by carriers and ticket agents when displaying fare, schedule or availability information online that includes multiple carriers.

*(3) Costs and Benefits*

The Regulatory Impact Analysis estimates the total discounted costs, which could be monetized over a 10-year period. Cost could only be robustly estimated for the reporting requirements, and may not include some other potential costs which the Department expects to have minimal impact. The costs of the reporting requirements are estimated to total \$7.74 million over ten years, which amounts to an annualized cost of \$0.96 million, when discounted using a seven percent rate. Given these estimates, the rule is not expected to be economically significant. The benefits could not be quantified and monetized with reasonable accuracy for the rule. Benefits were evaluated qualitatively for all provisions. A summary of this rule's benefits and costs is presented in the following table.

Summary of Rule's Benefits and Costs

<b><u>Major Provision</u></b>	<b><u>Benefits</u></b>	<b><u>Ten Year Costs</u></b> <i>Discounted 7%</i>
Additional Reporting Carriers for Service Quality Data	Improved ability of consumers, especially in rural communities, to examine the past performance of flights. Potential improved Department enforcement due to more complete picture of industry performance.	Costs to carriers to report the information estimated at \$7.74 million (10-year cost discounted at 7 percent).* Costs for some carriers to train employees and costs to consumers to use the information are not estimated.
Data Reporting for Domestic Code-Share Partner Operations	Improved ability of consumers, especially in rural communities, to examine the past performance of flights.	See above.

	Potential for improved Department enforcement due to more complete picture of industry performance.	
Transparency in Display of Code-Share Operations as Required by 49 U.S.C. 41712(c)	Helps ensure that all consumers purchasing via telephone, mobile websites, and applications are aware of code-share arrangements at beginning of booking process; some consumers may avoid time for additional flight searches.	Up-front programming costs to redesign mobile websites and applications to incorporate the code-share disclosure information for those carriers which had not interpreted statute as applying to mobile websites and mobile applications; potential costs for telephone reservations.
Prohibition of Undisclosed Bias	Decrease in potential distortion in market of consumer unknowingly choosing non-optional flights because of display order.	Based on assumptions with uncertainties, programming costs to add statement(s) for some carriers and travel agents are estimated to range from \$947,000 to \$2.8 million (undiscounted).

\*Costs were estimated for these two provisions together as their impacts are inter-related.

### *Background*

On May 23, 2014, the U.S. Department of Transportation (DOT) issued a notice of proposed rulemaking (NPRM), 79 FR 29970, to improve the air travel environment of consumers based on its statutory authority to prohibit unfair or deceptive practices in air transportation, 49 U.S.C. 41712. This NPRM addressed several recommendations to the Department regarding aviation consumer protection made by two DOT Federal advisory committees — the Future of Aviation Advisory Committee (FAAC) and the Advisory Committee on Aviation Consumer Protection (ACACP). It also addressed two issues identified in the second Enhancing Airline Passenger Protections final rule — (1) disclosure of fees for certain ancillary services at all points of sale; and (2) post purchase price increases for ancillary services. See 76 FR 23110. More specifically, the Department’s NPRM addressed and solicited public comments on the following issues: (1) Codification of the Department’s interpretation of

the statutory term “ticket agent”; (2) Disclosure of certain ancillary service fee information to consumers in all channels of sales; (3) Expanding the reporting carrier pool for service quality data; (4) Requiring reporting of service quality data for code-share flights by the marketing carriers; (5) Applying customer service commitments to large ticket agents; (6) Enhancing the disclosure of code-share operations; (7) Disclosing carriers marketed by large ticket agents; (8) Prohibiting undisclosed carrier display bias by large ticket agents; (9) Prohibiting post purchase price increases for certain ancillary services.

In response to this NPRM, the Department received over 750 comments from the following: U.S. air carriers and U.S. air carrier associations; foreign air carriers and foreign air carrier associations; consumer rights advocacy groups; travel agents, travel agent associations, and global distribution systems (GDSs); airports and various airport-related industry groups; and a number of individual consumers.

The Department has carefully reviewed and considered the comments received. To ensure that the subjects identified in the NPRM are addressed through rulemaking as efficiently as possible, we have decided to split the issues addressed in the 2014 NPRM into three separate rulemakings. First, in this final rule, we are finalizing regulations on several subjects on which we have completed our review and analysis, including completing a regulatory analysis. Specifically, we are finalizing rules: expanding the reporting carrier pool; requiring reporting of code-share flights by the marketing carriers; enhancing the disclosure of code-share operations; and prohibiting undisclosed display bias. Although we are not promulgating a requirement regarding disclosing on ticket agent websites that not all airlines are marketed by ticket agents at this time, that proposal is also addressed in this rulemaking. Second, we will be issuing a Supplemental Notice of Proposed Rulemaking (SNPRM) addressing disclosure of certain

ancillary service fee information to consumers in all channels of sales (GDS issue). See RIN 2105-AE56. We believe the SNPRM is necessary in light of the complexity of the issues and additional considerations identified by comments submitted on the NPRM. The NPRM also proposed revisions to baggage fee disclosure provisions section 14 CFR 399.85(a)-(c). Any revisions to that section relating to baggage disclosure requirements will be addressed in the SNPRM as that rulemaking is focused on ancillary service fee disclosures. Finally, for several subjects on which we believe that we have obtained sufficient information but need additional time to complete the regulatory analysis, we are postponing the issuance of a final rule until a later date. These subjects include the following: codification of the Department’s interpretation of the statutory term “ticket agent”; applying customer service commitments to large ticket agents; and prohibiting post purchase price increases for certain ancillary services, which includes addressing the “mistaken fares” issue. See RIN 2105-AE57.

For those subjects that we are finalizing in this final rule, in the table below we provide a summary of the regulatory provisions and a summary of the regulatory analysis. Following that, we summarize the commenters’ positions that are germane to the specific issues raised in the NPRM and the Department’s responses.

*Summary of Regulatory Provisions*

Subject	Final Rule
Additional Reporting Carriers for Service Quality Data	<ul style="list-style-type: none"> <li>• Expands the pool of reporting carriers from any carrier that accounts for at least 1% of domestic scheduled passenger revenue to any carrier that accounts for at least 0.5% of domestic scheduled passenger revenue.</li> <li>• Mandates reporting of data for scheduled flights to and from all large, medium, small, and non-hub U.S. airports.</li> </ul>

Data Reporting for Domestic Code-Share Partner Operations	<ul style="list-style-type: none"> <li>• Requires reporting carriers to separately report data for their domestic scheduled flights operated by their code-share partners: <ul style="list-style-type: none"> <li>○ On-time Performance</li> <li>○ Mishandled Baggage</li> <li>○ Oversales</li> </ul> </li> <li>• Allows a simplified data report for on-time performance of code-share flights if the operating carrier of the flights is a reporting carrier itself.</li> </ul>
Transparency in Display of Code-Share Operations as Required by 49 U.S.C. 41712(c)	<ul style="list-style-type: none"> <li>• Amends the Department's code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents must disclose any code-share arrangements on their websites. <ul style="list-style-type: none"> <li>○ Requires disclosure on the first display presented in response to a search of a requested itinerary for each itinerary involving a code-share operation.</li> <li>○ Disclosure must be in a format that is easily visible to a viewer.</li> </ul> </li> <li>• Adopts a simplified format for display of code-share disclosures via mobile websites and apps by permitting disclosure of only corporate name of the operating carrier</li> <li>• Enhances code-share disclosure in oral communication by requiring the disclosure be provided at the first time the flight is offered by a carrier or ticket agent or inquired by a consumer.</li> </ul>
Prohibition of Undisclosed Bias	<ul style="list-style-type: none"> <li>• Prohibits undisclosed biasing by carriers and ticket agents in any online displays of the fare, schedule or availability information of multiple carriers.</li> </ul>

### *Summary of Regulatory Analysis*

The Final Regulatory Evaluation examined the economic impact, in terms of all benefits accruing to airline passengers, and costs to U.S. and foreign air carriers and other entities regulated under this proceeding. Although benefits could not be quantified and monetized with reasonable accuracy for the provisions in the rule, benefits were evaluated qualitatively for all provisions. Meanwhile, the total discounted costs which could be monetized over a 10-year period could only be robustly estimated for Provisions 1 and 2. The costs of Provisions 1 and 2



are estimated to total \$7.74 million over ten years, which amounts to an annualized cost of \$0.96 million, when discounted using a seven percent rate. Other costs are expected to be minimal. Benefits were not able to be quantified for the most part. Nonetheless, the Department believes that the rule is in the public interest as it will provide consumers with more information to make decisions about air transportation purchases.

### *Discussion*

#### (1) Expanding the Definitions of “Reporting Carrier” and “Reportable flight” Under 14 CFR Part 234

*The NRPM:* 14 CFR Parts 234 and 250 require certain large U.S. carriers — the “reporting carriers” — to report data to the Department concerning on-time performance, mishandled baggage, and oversales. Currently, U.S. carriers with at least 1.0 percent of total annual domestic scheduled-passenger revenue are required to report. In the NPRM, we proposed to amend the definition of “reporting carrier” under Part 234 to include carriers that account for at least 0.5 percent of total annual domestic scheduled-passenger revenue. The purpose of this proposal is to increase the data reported by air carriers and published by the Department in order to provide the public with more information for making travel decisions. The proposed amendment to the definition of “reporting carrier” will not only affect the pool of carriers reporting on-time performance and mishandled baggage data to the Department and posting on-time performance information on the carrier’s website pursuant to 14 CFR Part 234, but will also affect the pool of carriers reporting oversales data to the Department under 14 CFR Part 250. We sought public comments on whether 0.5 percent is a reasonable threshold to achieve our goal of maximizing the scope of data collection from the industry while balancing that benefit for consumers against the reporting burden for additional carriers, particularly smaller ones. If 0.5

percent is not the most reasonable threshold, we asked whether a more reasonable approach would be an even larger expansion, e.g., to 0.25 percent, or a smaller expansion to 0.75 percent, or even requiring all carriers that provide domestic scheduled passenger service to report to the Department. We especially invited comments that provide specific cost estimates or analysis by smaller carriers that would potentially be impacted by this proposal. We also requested comments regarding whether a carrier's share of domestic scheduled passenger revenue remains an appropriate benchmark or if we should use a carrier's share of domestic scheduled passenger enplanements instead.

The current rule states that March 31 is the cutoff date for compiling a carrier's annual domestic scheduled passenger revenue percentage. However, for years, DOT's Bureau of Transportation Statistics (BTS) has been using June 30, instead of March 31, as the cutoff date. Currently carriers must report revenue information, including domestic scheduled passenger revenue, to DOT on a quarterly basis using Form 41. DOT uses this information to calculate each carrier's share of total domestic scheduled passenger revenue over the time period of July 1<sup>st</sup> to June 30<sup>th</sup> each year, and determines which carriers account for at least 1 percent of total domestic scheduled passenger revenue. The Department then provides notice to new reporting carriers of their obligation to report. In the NPRM we proposed to codify the June 30 as the cutoff date in the definition of "reporting carrier."

Finally, in relation to the burden associated with implementing a reporting mechanism within a carrier's operation system, we requested comments on how much time a newly reporting carrier will likely need to prepare for the new reporting duties. Although not proposed in the rule text, we stated in the preamble of the NPRM that we were contemplating that should this proposal be finalized, we would permit carriers that have not been reporting carriers but

become a reporting carrier under a new threshold to file their first reports by February 15 for the first January that is at least six months after the effective date of this rule.

In addition to expanding the pool of reporting carriers, the NPRM sought comments on whether we should expand the scope of “reportable flights” in relation to airports to include not only large hub airports (U.S. airports that account for at least 1% of domestic enplanements) that are mandated by the current rule, but also medium, small, and non-hub airports, or, alternatively, to include domestic scheduled flights to and from all U.S. airports where the reporting carriers operate. We also invited the public to provide information on the costs and benefits related to this matter.

*Comments:* Among the consumer rights advocacy groups that provided comments on this proposal, four groups, U.S. Public Interest Research Group (U.S. PIRG) and Consumers Union (in their joint comments) and Travelers United and National Consumers League (in their joint comments), support the expansion of the reporting carrier threshold to 0.5% of total domestic scheduled passenger revenue. Consumers Union and U.S. PIRG state that the information from newly covered carriers will be useful to consumers and regulators alike and that with current technology the compliance cost would be minimal and manageable. They also comment that, if feasible, the Department should require reports from all carriers providing domestic scheduled passenger flights from all airports. Travelers United and National Consumers League support the expansion because it would be beneficial to consumers by including airlines such as Spirit and Allegiant in the Department’s Air Travel Consumer Report (ATCR) and it would enhance transparency and accountability of airline performance for consumers. Flyersrights.org recommends that the Department should require all carriers with over \$100 million in revenue to file reports and that the reports should cover reporting carriers’ flights to all airports.

Flyersrights.org also states that flight cancellations that often cause significant delays to passengers should not be statistically reported as zero delay as the organization states they are under the existing reporting requirements.

Among the comments submitted by airlines and airline associations, Airlines for America (A4A), Hyannis Air Service dba Cape Air (Cape Air), JetBlue Airways, Frontier Airlines, and Southwest Airlines in general support the proposal to expand the reporting carrier pool. A4A states that the Department should require all carriers providing domestic scheduled service to file reports because it would increase the total amount of information available to the public and any carrier that has the resources to obtain an operating certificate and to offer scheduled service should not find it overly burdensome to report to the Department basic information about its operations. A4A also supports eliminating “reportable” flights and simply mandating that reporting carriers report on all flights. Cape Air supports the expansion to 0.5% but does not believe a threshold beyond that level would provide substantial benefit to the public in comparison to the costs because expanding beyond the 0.5% threshold would create significant burden to small businesses. Frontier Airlines supports the expansion as the performance data are important for consumers to compare carriers. Frontier points out that under the existing reporting carrier threshold, Frontier is a reporting carrier but its competitors such as Spirit Airlines and Allegiant Air are not reporting carriers.<sup>1</sup> JetBlue Airways supports including all carriers providing domestic scheduled passenger service in the universe of reporting carriers to increase transparency and available information to consumers. Southwest Airlines also supports the expansion, stating that today all carriers collect data and track on-time performance as a

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<sup>1</sup> On October 30, 2015, BTS issued its Reporting Technical Directive #25, effective January 1, 2016. Under that Directive, there are now 12 reporting carriers meeting the one percent domestic scheduled passenger revenue threshold: Alaska, American, Delta, ExpressJet, Frontier, Hawaiian, JetBlue, SkyWest, Southwest, Spirit, United, and Virgin America.

matter of business necessity and the performance indicators that are reported to the Department affect passengers without regard to the size of the carrier.

In opposition to the proposed expansion, Republic Airways Holdings Inc. and its subsidiaries, Republic Airlines, Chautauqua Airlines, and Shuttle America (herein collectively “Republic”) jointly filed comments asserting that the reporting requirements should not be extended to regional carriers that do not market flights and handle customer service under “fee for service/capacity purchase agreements” or “CPAs” as CPA carriers do not have information such as baggage handling or oversales. Republic further states that requiring CPA carriers to report data that mainline carriers are already reporting would be duplicative, imposing costs on CPA carriers and increasing potential consumer confusion with no corresponding regulatory benefits. As an alternative, Republic suggests that if the Department requires the CPA carriers to file reports, it should require the mainline carriers to provide certain data to CPA carriers. Regarding the cost and benefit aspect of the proposal, Republic states that the proposal will impose new technology and personnel costs and notes that the regulatory evaluation accompanying the NPRM concedes that the monetized cost of the two reporting-related proposals would far exceed their monetized benefits. With respect to the time needed by newly reporting carriers to prepare for filing the first report, Republic states that the Department should provide at least 18 months lead time so carriers have sufficient time to develop, test, and implement the reporting system. Allegiant Air opposes the expansion of reportable flights to cover smaller airports. Allegiant states that the expansion of reportable flights beyond large hub airports does not satisfy cost-benefit analysis given the small number of passengers utilizing these airports, and it would place a burden on small carriers serving these markets, and ultimately result in higher prices for consumers. American Airlines, Delta Air Lines, and United

Airlines submitted joint comments opposing any change in the current mishandled baggage reporting methodology. In its separate comment, Delta Air Lines asserts that any change to the current mishandled baggage reporting rules are unjustified and misleading.

Several airport associations also commented on this proposal, all supporting the expansion of the reporting carrier pool to include all commercial airlines. Airports Council International – North America (ACI-NA) states that the information is the same to passengers no matter the type of aircraft or the size of the airline. ACI-NA justifies its position by asserting that regional airlines now provide over half of daily domestic flights, and serve 70% of U.S. airports. Meanwhile, according to ACI-NA, technological enhancements in the last 25 years provide justification to require all carriers to report. The American Association of Airport Executives (AAAE) points out that the Government Accountability Office (GAO) concludes that airlines not required to report to DOT have higher delay, cancellation, and diversion rates, and smaller communities are left out of the equation. Regarding costs and benefits, AAAE states that in the past paperwork was a limiting factor but modern technology now makes the process much easier and more efficient. California Airports Council states that with the significant growth of regional airlines at airports of all sizes, it is crucial for DOT to include all carriers' operations in consumer protection regulations and notifications. San Francisco International Airport also supports the expansion of the reporting carrier pool to cover all commercial airlines. It states that this expansion will improve the amount and quality of information available to passengers while encouraging open and fair competition among air carriers. It also points out that air carriers providing scheduled commercial service in the United States in 2014 are universally equipped with technology sufficient to provide service quality data and doing so should not create a burden.

Marks Systems, Inc., d/b/a masFlight (masFlight), an industry provider of aviation operations analysis, recommends that the Department adopt a 0.25 percent threshold to capture all low-fare and significant regional carriers and to ensure fairness across the industry in transparency and regulatory compliance. In supporting this position, masFlight provides data from 2013 demonstrating that under the 0.25 percent threshold, an additional five carriers would be captured compared to the proposed 0.5 percent threshold (Shuttle America, Horizon, PSA, Chautauqua, and Sun Country), leaving only two carriers that are under the 0.25 percent threshold (GoJet and Compass). MasFlight cites the Initial Regulatory Impact Analysis for the NPRM that estimates the initial cost for a new reporting carrier to be \$33 million over a 10-year period, and asserts that this potential compliance cost would be excessive to a carrier that accounts for less than 0.25 percent of domestic scheduled passenger revenue. MasFlight also suggests that the Department maintain its current benchmark using domestic scheduled passenger revenue instead of changing to domestic scheduled passenger enplanements to minimize compliance cost. MasFlight supports expanding the definition of reportable flight to cover all U.S. airports.

*DOT Responses:* Since their implementation, the reporting requirements in Part 234 (for on-time performance and mishandled baggage) and Part 250 (for oversales) have been effective tools for the Department to collect airline service and performance data. The Department also uses the information to monitor the quality of service provided to the flying public by each reporting carrier and to furnish the information to consumers via the Air Travel Consumer Report. This data also provides the Department necessary information used in connection with rulemakings and other important policy decisions. As stated in the NPRM, the current 1.0 percent domestic scheduled passenger revenue threshold was initially adopted in 1987 as a

compromise in order to reduce the burden imposed on small businesses because at that time, small carriers were less likely to maintain their flight performance data in a computerized form. 52 FR 34056 (September 9, 1987). The comments we received on this NPRM do not dispute that the more information the Department receives through its reporting mechanism, including service quality of small airlines, and information on flights to and from small airports, the greater the benefit to the public. We are confident that lowering the threshold for reporting to add certain smaller carriers' performance data to the data currently collected by BTS will enable the Department to obtain and provide to the flying public a more complete picture of the performance of scheduled passenger service in general. We are also optimistic that including smaller airlines' performance data in the Department's data collection will specifically benefit small communities and regional markets that are primarily served by these smaller airlines by increasing the level of public scrutiny of their performance quality and increasing their competitiveness.

Furthermore, expanding the pool of reporting carriers responds to the recommendation by GAO in its September 2011 Report to Congressional Requesters.<sup>2</sup> In that report, GAO states that the Department should collect and publicize more comprehensive on-time performance data to include information on most flights, to airports of all sizes. The Department shares GAO's view that expanding the reporting carrier pool would enhance the Department's ability to analyze the cause of flight disruptions such as delays and cancellations, particularly with respect to airports in smaller communities, at which consumers are more likely to be inconvenienced by flight irregularities due to less-frequent service.

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<sup>2</sup> *Airline Passenger Protections: More Data and Analysis Needed to Understand Effects of Flight Delays*, September 2011, GAO. <http://www.gao.gov/products/GAO-11-733>



The comments opposing expansion of the reporting carrier pool mainly focus on the burden it will place on smaller carriers. In that regard and consistent with the approach taken by the Department in the 1987 final rule, we have determined that there is a balance between obtaining the most useful information on flight performance quality and avoiding excessive burden and cost to smaller airlines. The Department concludes that the 0.5 percent threshold is appropriate in striking that balance, taking into consideration the technological advances during the past 29 years in tracking and recording flight performance data. Our decision also takes into account the fact that we are adopting the proposal requiring marketing carriers to report flight performance data for domestic flights operated under the marketing carrier's code by code-share partners, including smaller, non-reporting carriers, which will be discussed in the next section of this preamble. The chart below contains information on certificated carriers affected by these thresholds based on annual scheduled passenger revenue as reported to BTS for the 12-month period ending June 30, 2015:

<b>Reporting Carriers Meeting the Existing 1% Threshold</b>	
1	Alaska
2	American
3	Delta
4	Express Jet
5	Frontier
6	Hawaiian
7	JetBlue
8	SkyWest
9	Southwest

10	Spirit
11	United
12	Virgin America
<b>Carriers Meeting the Expanded 0.5% Threshold</b>	
1	Air Wisconsin
2	Allegiant
3	Endeavor
4	Mesa
5	Envoy
6	Republic
7	Shuttle America
<b>Carriers Meeting the 0.25% Threshold (Not Adopted)</b>	
1	Horizon
2	PSA
3	Sun Country
<b>Carriers Accounting for Less Than 0.25% of Domestic Scheduled Passenger Revenue</b>	
1	Compass
2	GoJet

Although the costs of maintaining and filing performance data with the Department has been reduced significantly compared to what it was in 1987, the Department is aware that it is still not a negligible expense for smaller carriers under the 0.5 percent threshold. Technology developments such as automation of performance data tracking reduces the cost of human capital

needed for the tasks. However, the initial cost of setting up a sophisticated system to aggregate the data meeting the Department's reporting criteria and adding personnel to file monthly and quarterly reports with the Department may disproportionately burden smaller carriers.

In addition to the concerns about the burden to smaller carriers, we have also decided not to adopt a threshold lower than 0.5 percent as endorsed by some commenters because most of the flights operated by those carriers falling below the 0.5 percent threshold will be captured under the code-share flights reporting requirement, which is discussed in the next section. According to the current data, if we adopt a 0.5 percent threshold, five smaller certificated carriers providing scheduled domestic passenger services (Horizon, PSA, Sun Country, Compass, and GoJet)<sup>3</sup> will not be required to file reports directly with the Department. Four of these five carriers operate code-share flights on behalf of their marketing-carrier partners, which are all reporting carriers. Horizon operates solely for Alaska Airlines, PSA operates solely for American Airlines, Compass operates for American Airlines and Delta Air Lines, and GoJet operates for United Airlines and Delta Air Lines. All of those four smaller carriers' flight performance data will be reported by their marketing carriers. Sun Country is the only carrier among the five that does not operate code-share flights and will not have its performance data reported to the Department under the 0.5 percent threshold. Sun Country accounted for only 0.32% of domestic scheduled passenger revenue. In other words, adopting a 0.5 percent threshold will allow the Department to capture in substance 99.68% of the flight performance data for domestic scheduled flights.

We recognize that Horizon, PSA, Compass, and GoJet will likely incur certain expenses to assist

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<sup>3</sup> The list of carriers (based on 2015 domestic scheduled passenger revenue data) is for the purpose for illustrating the size and number of carriers that currently would and would not be affected by this change. Each year the Department's Bureau of Transportation Statistics' Office of Airline Information updates the list of reporting air carriers. Although the carriers that fall above or below the threshold may change from year to year, as historical data demonstrates, we don't expect the number of affected carriers to change drastically.

their marketing carriers in compiling the reports. However, we consider the cost-sharing structure between the smaller operating carrier and large marketing carrier to be an effective and efficient way for the Department to obtain the data while limiting the burden imposed on smaller carriers.

Finally, as technology development appears to be the primary factor affecting the costs incurred by a carrier in tracking, compiling, and filing performance data with the Department, we will continue to monitor the effect of new technology on the cost of recordkeeping and the scope of carriers covered by the reporting requirements. We will consider expanding the reporting requirements to other carriers providing scheduled service if it becomes economically sound and necessary to obtain data beneficial to consumers.

The Department appreciates the Republic carriers' comments regarding the CPA carriers' lack of firsthand information on customer service related data as these carriers may not handle customer services such as baggage handling or oversales. The Department further notes that the relationship between a CPA carrier and its code-share marketing-carrier partner is different from carrier to carrier, depending on each CPA's terms and conditions, and such a relationship has the potential to further evolve in the future. For example, a CPA carrier that currently does not handle baggage may begin to handle baggage in the future. As such, the Department does not believe it is appropriate to exempt the CPA operating carriers entirely from reporting baggage handling and oversales data at this time. Larger CPA carriers such as SkyWest or ExpressJet currently file reports including data that they obtain from their marketing partners, which indicates to the Department that a cooperative information collection and compilation structure between marketing and operating carriers is technically and economically workable. We anticipate that in the future carriers may include provisions in their CPA contracts for the

marketing carrier to provide baggage handling and oversales data to the reporting operating carrier in a timely manner if that is relevant to the carriers' relationship. In the meantime, the Department expects carriers to work together in good faith to share information with each other in order to facilitate the required reporting.

With respect to the question of whether the Department should use domestic scheduled passenger enplanements as a benchmark to define "reporting carrier" in lieu of the current benchmark of domestic scheduled passenger revenue, we received no comments supporting such a change and we do not see any compelling reason for such a change. While keeping the current benchmark, we also adopt in this final rule the longstanding practice by BTS to use June 30 as the cutoff date for compiling a carrier's annual domestic scheduled-passenger revenue percentage, as opposed to March 31 as stated in the current rule. No adverse comments were received.

With respect to the definition of "reportable flight" that currently only covers flights to and from large hub airports, the vast majority of comments are in support of including all airports in the reporting regime. We are unconvinced by Allegiant Air's assertion that we should exempt flights to and from smaller airports from the reporting requirements on the basis that such reporting imposes an excessive cost on the carriers. Exempting flights to and from smaller airports will render our inclusion of smaller carriers in the reporting carrier pool less meaningful. Further, we note that the current reporting carriers all have chosen to file reports for scheduled passenger flights to all U.S. commercial airports where they operate. As such, there is an argument to be made that a reporting carrier would incur more cost to separate flights operated out of large hubs from flights operated out of other airports for reporting purpose as compared to reporting all flights operated out of all airports. For these reasons, we adopt in this final rule a

mandate to report the on-time performance and mishandled baggage information for domestic scheduled flights marketed by a reporting carrier to and from all U.S. large, medium, small, and non-hub airports pursuant to Part 234. By expanding the reportable flights under Part 234 to these categories of airports, we are covering all domestic scheduled flights to and from U.S. commercial airports that have an annual passenger enplanements of 10,000 or more. We note that this expansion of airports covered under Part 234 does not affect the scope of airports covered under 14 CFR 250.10, reporting oversales information, which covers and will continue to cover all domestic scheduled flights and all international scheduled flights departing a U.S. airport and using an aircraft that has a designed passenger capacity of 30 or more passenger seats.

In response to Flyersrights.org's comment that flight cancellations are currently not statistically reported as flight delays, the Department wishes to clarify that the ATCR categorically treats cancelled flights as flights not operated "on time," along with flights that are diverted or are delayed for 15 minutes or more. See, *Air Travel Consumer Reports, Footnote D of Footnotes for Tables 1 Through 6 (Flight Delays) and 8 (Cancellations)*. In other words, under the current reporting structure, a cancelled flight counts as a delayed flight in a carrier's on-time performance percentage. Thus, we do not believe any change to that structure is necessary.

The Department appreciates the comments submitted by United, Delta, and American, jointly, and by Delta, individually, on the rationale for the Department's proposal to change the matrix and the methodology of collecting mishandled baggage information. However, this rulemaking addresses which airlines and flights are subject to the reporting requirements contained in Parts 234 and 250, and it does not address what methodology the carriers are

required to use to collect and report the data. A separate rulemaking, “Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments,” RIN 2105-AE41 (formerly 2139-AA13), Docket No. DOT-RITA-2011-0001, addresses the methodology for collection of mishandled baggage information. The Department fully reviewed and considered all substantive comments submitted to that docket (DOT-RITA-2011-0001), including comments by United, Delta, and American. The final rule on reporting of data for mishandled baggage and wheelchairs and scooters transported in aircraft cargo compartments is being published contemporaneously with this final rule. Because the Department’s proposal to change the mishandled baggage reporting matrix was resolved in a separate rulemaking and the instant rulemaking on transparency of ancillary service fees and other consumer issues will not result in any change to the matrix on how to report mishandled baggage, please see the Department’s final rule on “Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments” for responses to comments concerning the reporting matrix.

With respect to the compliance dates of this reporting threshold change, we have carefully considered the comments submitted and consulted with BTS on its estimated timeframe to fully implement a system capable of accepting and accommodating the newly included reporting carriers under this final rule. We have reached the conclusion that the new reporting carriers should be required to file their initial reports for on-time performance and mishandled baggage by February 15, 2018, for January 2018 operations; to file their initial reports for oversales by April 30, 2018, for the first quarter of 2018; and to load on-time performance disclosure data for each domestic scheduled flight marketed on their websites on Saturday, February 24, 2018, for flights operated in January 2018. Consistent with the existing rule,

carriers must load all subsequent flight performance information on the fourth Saturday of the month following the month that is being reported. Oral disclosure of on-time performance information upon consumers' reasonable inquiry during the course of reservations or ticketing discussions or transactions should begin no later than February 25, 2018. We believe this provides sufficient lead time to the new reporting carriers to set up the infrastructure and train their personnel to handle the reporting of this data. We also believe that requiring the initial monthly reports to start in January and the initial quarterly reports to start in the first quarter provides the benefit of preserving the consistency of the Department's data for a full calendar year during the transition. We note that with the exception of Allegiant Air, all new reporting carriers do not directly market flights they operate to the public and therefore are under no obligation to implement the disclosure requirements contained in 14 CFR 234.11.

(2) Carriers to Report Data for Certain Flights Operated by Their Code-Share Partners

*The NPRM:* The current reporting structures in Parts 234 and 250 only require reporting carriers to report performance data for flights they operate and not for flights marketed under the reporting carrier's code but operated by a code-share partner. The NPRM proposed to require reporting carriers that market flights operated by their domestic code-share partners to file a second and separate set of on-time performance, mishandled baggage, and oversales data reports that include the relevant data for both flights they operate and flights operated by their domestic code-share partners. We asked whether the second set of data should only contain data for code-share flights and whether it should include separate flight statistics for each code-share partner. We also solicited comments on whether "double counting" is an issue under this proposal (e.g., a regional carrier operating a flight for more than one marketing carrier and therefore the same flight would be reported twice by the marketing carriers). Furthermore, we asked the public to



provide comment about how to deal with the situation where a flight carries two large carriers' codes and is operated by one of the two carriers (mainline-to-mainline code-share). Finally, as for the proposal to expand the reporting carrier pool, we asked what a reasonable implementation period is for the marketing carriers to comply with this new reporting requirement.

*Comments:* All consumer rights advocacy groups that submitted comments on this proposal are generally in support of including code-share flights service quality data in the marketing carrier's reports. Consumers Union and U.S. PIRG cite the monthly ATCR, which provides critical and helpful information to consumers about airline performance (including delayed and canceled flights, mishandled baggage, consumer complaints, and denied boardings), and state that this change will make the report even more useful for consumers. They also agree with the Department's proposition that this change will increase airline incentives to improve performance, not only in their own operations but also in the operations of the carriers with whom they partner. Further, Consumers Union and U.S. PIRG assert that the performance information on code-share flights would be of maximum usefulness if it is provided in aggregate for the mainline carrier and all of its code-share partners, and also disaggregated for each code-share partner separately. Consumers Union and U.S. PIRG question the soundness of the Department's proposal to limit the reporting of code-share flights data to non-stop flights operated by code-share partners and avers that the Department should include all flight segments that are marketed by mainline carriers.

Travelers United and National Consumers League also support this proposal, stating that code-share flights now account for more than half of domestic flights, yet the poorest performance records of regional partners operating under legacy carriers' codes are not reflected in legacy carriers' performance reports. Travelers United and National Consumers League also

strongly urge the Department to include international flights operated by code-share partners in the reporting mandate because joint ventures in international operations should not enjoy immunity from clear, understandable reporting requirements.

Among comments submitted by carriers and carrier associations, A4A agrees with the Department's regulatory objective but believes there are equally effective but less burdensome ways of achieving that objective. A4A states that the proposed reporting requirement for code-share flights would result in the submission of duplicate data by different carriers, create difficulty for the reporting carriers to certify and submit data provided by their code-share partners, and make it difficult for both carriers and BTS to process the newly required data. In that regard, A4A proposes an alternative means for the Department to collect data for code-share flights and attribute this data to the records of the marketing carriers. Under A4A's proposal, each mainline marketing carrier would provide to BTS a monthly list of the operating carriers and flight numbers of code-share flights operated by another carrier under the reporting carrier's code; BTS would then combine this list with the information submitted directly by the operating code-share partners to generate and publish the desired service information regarding the code-share flights of the mainline carrier. A4A avers that this approach would eliminate the prospect of two carriers submitting duplicate information, and BTS would have the complete data set earlier in the month and would not have to scrub the data to account for duplicate reports.

A4A opposes including data for mainline-to-mainline code-share flights in a carrier's report. In support of this proposition, A4A points out that this type of code-share flight represents a small proportion of overall traffic (roughly 2%) and therefore, including or excluding this data will not likely change a carrier's data and ranking in the ATCR. Additionally, A4A states that reporting data for these flights would be exceptionally difficult due to lack of

systems and data exchange. Further, A4A states that in the mainline-to-mainline code-share situations, the consumer purchased the ticket from a marketing carrier that does not operate the flight is typically very aware of the operating carrier brand and that the operating carrier is different from the marketing carrier, and if the consumer is interested in the other mainline operating carrier's statistics he/she can review reports for that carrier. Additionally, A4A states that the marketing carrier in the denied boarding context has no control over the inventory of the operating carrier if it does not have a capacity purchase agreement with that carrier. A4A concludes that for these reasons, the burden of collecting, sharing, verifying, and reporting data on both the operating and the marketing carriers in a mainline-to-mainline code-share would be disproportionately burdensome relative to any public benefit.

Regarding the time needed for carriers to prepare for the new reporting requirement, A4A argues that the implementation time proposed by the Department is a fraction of the time needed. According to A4A's estimate, if each carrier reports for itself, six months may be adequate for on-time performance and oversales reports; for baggage reporting, even using the current matrix, it will take 24-36 months. A4A also submitted comments opposing the Department's proposal to change the mishandled baggage reporting matrix contained in Docket DOT-RITA-2011-0001 and those comments were considered in connection with that rulemaking.

The Republic carriers (Republic, Shuttle America, and Chautauqua), Frontier Airlines, JetBlue Airways, and Southwest Airlines are all in support of the proposal. Republic supports the proposal to have the mainline marketing carriers report the service quality data for flights operated by their CPA code-share partners. In conjunction with its comments on the expansion of the reporting carrier pool, Republic states that the flights operated under CPAs are sold, marketed, and handled by the mainline carriers under their names and designator codes. In

addition, Republic asserts that the mainline carriers also schedule and monitor the arrival and departure times for all flights operated under their codes. Therefore, according to Republic, the CPA operating carriers do not have possession of the customer service quality data required by the reports and have no ability to obtain such data from their marketing carriers. Frontier Airlines believes that this proposal will fill another data gap in the current monthly ATCR whereby reporting carriers only provide data for mainline operations but not code-share operations. Frontier further states that without this data the ATCR only provides a partial picture of the travel experience under the mainline carrier's brand. Frontier submits that the gap in data under the current reporting structure may incentivize mainline carriers to engage in certain unfair practices to boost their performance. In support of this proposal and the proposal to expand the reporting carrier pool, JetBlue states that at certain airports a majority of flights are sold to consumers by a legacy carrier and operated by a regional partner. JetBlue states that under the current rule, basic data, such as on-time performance, mishandled bags and other metrics, are not reported by either of these carriers, even though the consumer bought the ticket from a legacy carrier (i.e., a Part 234 reporting carrier). Southwest Airlines also supports the proposal and notes that it operates 100% of its domestic scheduled flights yet many legacy carriers have extensive code-share operations. Southwest argues that the current reporting structure may lead to consumer confusion or misrepresentation and hinder competition. Furthermore, Southwest believes that airports are also judged for on-time performance in a market or region where airports are competing for customers; therefore, airport data should be complete and relevant. Regarding the costs and benefits of this proposal, Southwest states that the cost to mainline carriers may not be significant as they are already calculating the revenue derived from each code-share partner and they should be able to calculate those flights' on-time performance. In

closing, Southwest states that if the Department concludes that such a requirement is too burdensome, it would support A4A's proposed alternatives.

Cape Air, Delta Air Lines, and United Airlines submitted comments in opposition to this proposal. Cape Air asserts that it is not beneficial to require existing carriers to report their code-share flights because to include the data for smaller regional flights with the statistics of major carriers would skew the report by giving equal weight to flights that carry significantly fewer passengers, and the report would not reflect the experience of the majority of customers traveling on the reporting carrier's flights. Delta proposes that regional operating carriers should be required to report data for their flights as the marketing carriers are in a poor position to verify the accuracy and quality of data received from code-share partners. Delta also argues that dual reporting will result in duplicate data by different carriers. Regarding the Department's question on whether double counting is an issue under this proposal, Delta states that double counting is a problem with respect to mainline-to-mainline code-share flights. Delta suggests that these flights should be exempted from reporting as the Department's primary regulatory interest on this issue is to collect and publish data from regional code-share flights. As with A4A's comment, Delta points out that these mainline-to-mainline flights only represent 2% of reportable flights and consumers are well informed that the mainline operating carrier is different from the marketing carrier.

United Airlines also opposes the proposal to require mainline marketing carriers to report code-share flights data. United argues that the Department has provided little data or anecdotal evidence to support the hypothesis that the current reporting structure results in consumer confusion or misrepresentation. In addressing the 2011 GAO report and its recommendation for the Department to collect and publicize more comprehensive on-time performance data, United

argues that such a goal can be accomplished by expanding the reporting carrier pool to include smaller carriers, as proposed in this rulemaking. United further argues that the GAO report only recommended additional on-time performance data collection and did not recommend that the Department expand the universe of mishandled baggage and oversales reporting to include code-share flights. United states that if the Department adopts the proposed requirement on code-share flights reporting, certain modifications should be made, in which the mainline carriers should not be responsible for reporting data for flights that they do not operate and the operating regional carriers should be reporting this data. With respect to the time a carrier may need for preparing for its initial report under this new reporting requirement, United avers that significant lead time is needed — at least 18-24 months for on-time performance and oversales data reporting, and at least 36 months for the mishandled baggage reporting, assuming the Department adopts its proposal for reporting mishandled baggage as proposed in DOT-RITA-2011-0001. With respect to preparing reports for code-share flights following the initial report, United asserts that the carriers will need more than the current 15-day window. In that regard, United suggests that should the Department adopt the proposal to require marketing carriers to report data for code-share flights, the report deadline for this data should be expanded to at least 30 days after the end of the month. United also opposes imposing the reporting requirement on “non-branded” (mainline-to-mainline) code-share flights in which both operating carrier and non-operating carrier market and sell seats on the flights.

All airports and airport associations that filed comments support this proposal. ACI-NA points out that over half of flights by the three largest carriers are operated by code-share partners and this change will provide more comprehensive information on which to base travel decisions without unduly burdening air carriers. AAEE asserts that requiring reporting of code-

share performance data will have an overall positive operational impact, as on-time performance at large hub airports can differ between mainline and code-share flights. The commenter further asserts that including code-share flights performance data in the marketing carriers' reports will benefit consumers because consumers cannot discern the difference between mainline carriers and code-share operating carriers as mainline carriers manage marketing, ticketing, and ground operations. California Airports Council points out that regional carriers now provide the vast majority of scheduled services to California airports, and over half of all daily domestic flights in the United States. The organization argues that the current reporting requirements do not always provide accurate and comprehensive data to consumers as almost 50% of the domestic flights marketed by the nation's three largest airlines are operated by code-sharing partners. As an example, California Airports Council states that United Airlines' on-time arrival rate at San Francisco International Airport (SFO) would have been 6% lower in July 2014 if code-share flights were included compared to what was reported under the current regulation. The commenter states that some of its member airports serving small communities and SFO have a much lower on-time performance rate than the national average and that the relatively poor on-time performance of certain flights at those airports is being obscured by the current reporting process.

MasFlight also commented on this proposal, stating that monthly air carrier information published by the Department that correctly groups both mainline and regional flights under the marketing carrier's code would be valuable from a consumer perspective and provide an apples-to-apples comparison among airlines. However, masFlight states that such an objective can be accomplished in less costly ways as the Department's proposed method duplicates work, requires transfer of information among partner carriers and creates new overhead investment by the

Department itself. MasFlight distinguishes two types of code-share arrangements, “regional code-share operations” in which mainline carriers contract for exclusive or near exclusive capacity on flights operated by regional partners, and “partnership operations” in which the marketing carrier has limited inventory on the operating partner’s flight. MasFlight supports the Department’s view as stated in the NPRM that regional carriers’ operating quality should be attributed to the marketing carriers’ performance records but argues that only marketing carriers that control over 25% of the seats on a flight should have the operating records attributed to them.

*DOT Responses:* The Department’s monthly ATCR provides airline service quality data to the public and ranks reporting carriers’ performance based on several categories. Three of the six categories ranked and reported in the ATCR— flight delays, mishandled baggage, and oversales — are based on data collected by BTS pursuant to 14 CFR Part 234 and Part 250. The ATCR’s performance tables, particularly the rankings, are widely accepted as important indicators of the carriers’ quality of service, and are frequently referred to in news reports, industry analyses, academic studies, and consumer commentaries and forums. The ATCR data and rankings as reflected in news reports and institutional studies have a significant impact on a carrier’s image and brand identity, which in turn has a potential effect on the decision making of many consumers when deciding to purchase air transportation. In the NPRM, we discussed the inadequate scope of current data collection, the most significant area being that a marketing carrier’s flights operated by code-share partners are not included in the reported data. After reviewing the comments submitted on this subject, the Department is further convinced that it is in the public interest to address the discrepancy between legacy/mainline carriers’ ATCR data



that represent only 38%-55%<sup>4</sup> of all domestic scheduled flights that are branded with the marketing carriers' codes, and low-cost carriers' ATCR data that often contain close to 100% of all flights sold by those carriers under their codes. Consequently, we are finalizing the proposal requiring mainline marketing carriers to report the service quality data for flights operated by their code-share partners, which, in our view, will benefit consumers by providing them more information. Although consumer confusion is not always the case, we recognize that in many instances consumers may consider these code-share flights operated by code-share regional partners to be air transportation service provided by the mainline carriers to the same extent as the flights actually operated by the mainline carriers. This is particularly true if, as in most cases, the mainline carriers also handle flight scheduling and virtually all aspects of ground operations including customer service related issues, such as dealing with oversales situations, providing denied boarding compensation, and addressing mishandled-baggage reports. This change will also benefit consumers because including performance data for these code-share flights in the marketing carriers' ATCR records will provide both the operating carriers and the marketing carriers the incentive to universally improve performance quality, regardless of whether the flights are operated by mainline carriers themselves or their code-share partners.

The Department also carefully considered the comments submitted regarding the difference between the "fee-for-service" code-share arrangements and the "multiple-marketing-carrier/brand" code-share arrangements. In the fee-for-service code-share arrangement, the sole marketing carrier contracts with the operating carrier to purchase all seats on the flights, sets the flight number with its own airline designator code, and brands the flight with the marketing carrier's brand name, often with the suffix of "Express" or "Connection" to identify that it is a

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<sup>4</sup> Data based on 2015 operation information collected by the Department's Bureau of Transportation Statistics, Office of Airline Information.

regional-carrier flight. The marketing carrier is responsible for setting the flight schedules, in consideration of and in coordination with its network capacity, potential for connections, and overall efficiency. The marketing carrier's operation control center makes decisions on flight dispatching, and often handles many ground services such as checking in at the airport, baggage handling, boarding and deplaning. Passengers with service related issues will contact the marketing carrier's customer service center for assistance. The operating carrier is only in charge of the flight operation and onboard passenger services. In the Department's view, fee-for-service code-share flights are an integral part of the marketing carriers' networks and their performance quality is an important component of the marketing carriers' overall performance quality. The public will benefit from a complete view of a marketing carrier's performance record that includes the fee-for-service flights operated by another carrier, for which the marketing carrier has control over virtually every aspect of the air transportation service except the operation of the flight itself. Fee-for-service code-share arrangements allow a marketing carrier to reach regional markets without taking on expensive investments such as purchasing/leasing and operating aircraft or training and maintaining flight crews. Marketing carriers also have economically sound reasons to retain many ground handling tasks for code-share flights, such as maintaining consistent brand quality and fully utilizing existing ground personnel and equipment. For these reasons, the performance quality of these fee-for-service code-share flights should be attributed to the marketing carrier's ATRC records and rankings.

In this final rule, we adopt the requirement for marketing carriers to report to the Department service quality data of domestic fee-for-service code-share flights marketed under their codes. Accordingly, all reporting carriers will continue to file reports for on-time performance, mishandled baggage, and oversales for flights that they operate. Those reporting

carriers that market fee-for-service flights operated by another carrier will be required to submit a second set of data for those flights. We specifically address the three reporting subjects as follows:

*On-time performance data:* We have considered the comments by A4A and others about the burden to marketing carriers and determined that there are ways to address this issue while still obtaining the data that will achieve the goal of the Department. Specifically, for flights that are operated under the marketing carrier's code on a fee-for-service basis by a reporting carrier, the Department will reduce the marketing carriers' reporting burden by requiring them to simply identify on a monthly basis those fee-for-service flights that they market. The Department's Bureau of Transportation Statistics (BTS) will extract the on-time performance data from the reports already submitted by those flights' operating carriers that are reporting carriers. For fee-for-service flights that are operated by a non-reporting carrier, it is the marketing carrier's responsibility to provide the full set of on-time performance data for each flight in the same manner as they report for the flights they operate on their own.

*Mishandled baggage and oversales data:* For mishandled baggage and oversales data, because carriers are only required to file those reports in the aggregate (as opposed to filing on-time performance data on a flight by flight basis) we see no need to simplify the reporting data in the way that we did for on-time performance data. As such, the reporting carriers that market fee-for-service code-share flights must submit a second set of mishandled baggage monthly reports that contains the data for all reportable fee-for-service flights that they market, and a quarterly oversales report that contains the data for all reportable fee-for-service flights that they market. This final rule differs from the NPRM in which we proposed to have the marketing carriers report a second set of data that contains data for all flights they market, including not

only the code-share flights but also the flights the marketing carriers operate. Requiring a second set of reports that contain only fee-for-service flight data potentially slightly reduces the burden on carriers by eliminating the need to prepare a report that combines data from the report on flights operated by the reporting carrier and data on flights operated by a code-share partner on a fee-for-service basis for the reporting carrier, while affording the Department the flexibility to add all flight data together, or to view flight data for reporting carriers' own flights and code-share flights separately.

In contrast to fee-for-service code-share arrangements, the multiple-marketing-carrier code-share arrangements involve more than one marketing carrier for a single flight operation. Thus, under this type of code-share arrangement, a single flight is coded with more than one carrier's designator code and flight number. In the NPRM, we mentioned only the mainline-to-mainline code-share arrangements (in which two mainline carriers both market the same flight under each carrier's code and one of the mainline carriers also operates the flight) and sought comments on whether these flights should be included in the non-operating marketing carrier's reports. After viewing a snapshot of multiple-marketing-carrier code-share flights for the first quarter of 2015 compiled from the Official Airline Guide, Part 234 data, and the Origin and Destination Survey, we realize that several variations exist under the multiple-marketing-carrier code-share arrangements. Some of the flights are marketed under the codes of only two carriers, one of which operates the flight. In those situations, the carrier that is both marketing and operating the flight could be a mainline carrier (as referred to in the NPRM as "mainline-to-mainline" code-share) or a regional carrier that markets a small number of seats on the flight. Another variation is multiple carriers market the flight and the operating carrier and non-operating carriers all sell a certain number of seats on the same flight. Yet another variation is

the situation in which the operating carrier does not market the flight but two or more non-operating carriers market the flight. In the 2015 first quarter data we reviewed, we found one flight that carried five different carriers' designator codes. With respect to each marketing carrier's share of seats on a flight, we found great variation as well. While a large percent of these flights have a "main" marketing carrier that sells the great majority of the seats, many flights with two marketing carriers split the seats approximately half and half, one third and two thirds, or a quarter and three quarters.

At this point, the Department lacks information on how carriers share the control and responsibility for handling multiple-marketing-carrier code-share flights under various arrangements, such as which carrier(s) determine the flight schedule and which carrier(s) handles baggage and oversales. We can only speculate that much of this information will depend on which carrier controls what percentage of seats on a given flight. We also lack information on how consumers perceive the multiple-marketing-carrier flights with respect to their brand identity. As stated in the NPRM, our primary regulatory interest at this time is collecting and publishing data on code-share service operated by the regional-carrier partners of the larger U.S. airlines. We recognize that this primary purpose is served by capturing the fee-for-service flights' performance quality and attributing this information to the only marketing carrier's performance records. As the multiple-marketing-carrier code-share flights only count for a small percentage of the total number of code-share flights, we have decided that marketing carriers that are not the operating carrier will not be required to include those flights in their second set of reports. We will, however, continue to monitor how multiple-marketing-carrier code-share arrangements evolve both with respect to their structures and their volumes. Should we see the

need to include these code-share flights in any marketing carriers' performance reports, we will address this matter in a future rulemaking.

Regarding Travelers United and National Consumer League's comment urging the Department to collect flight performance data for international flights, we note that the current Part 234 reports cover only domestic scheduled flights and the current Part 250 reports cover domestic scheduled flights and international scheduled flights departing a U.S. airport. To require reports for other international flights is beyond the scope of the NPRM.

With respect to Consumers Union and U.S. PIRG's question on the soundness of the Department's proposal to limit the reporting of code-share flights data to non-stop flights operated by code-share partners, we clarify that both the current reporting system and the final rule as adopted require carriers to report flight performance data on a per flight segment basis. As such, all domestic segments of a multi-segment direct flight are covered by the reporting requirement in the existing rule and in this final rule.

With respect to the compliance date of this rule by which all marketing carriers that report to the Department under Parts 234 and 250 are required to file a second set of data for their fee-for-service code-share flights, we have fully considered the comments submitted and decided that it is reasonable to set the compliance date as transportation that takes place on or after January 1, 2018, coinciding with the compliance date for all reporting carriers to comply with the revised mishandled baggage reporting rule (Docket DOT-RITA-2011-0001). As with that rulemaking, we believe that choosing the first day of the year as an effective date will make future year-over-year comparisons more meaningful, and the carriers will have more than a year to work with their code-share partners to structure an internal system by which both carriers work together to compile the reports required from the marketing carriers. As such, all reporting

carriers that market fee-for-service code-share flights will be required to file a second set of data that contains those code-share flights' on-time performance and mishandled baggage information for the month of January 2018 by February 15, 2018, and to file a second set of data that contains those code-share flights' oversales information for the first quarter of 2018 by April 30, 2018.

(3) Codifying 49 U.S.C. 41712(c) Regarding Website Disclosure of Code-Share Service and Other Amendments to 14 CFR Part 257

*The NPRM:* Code-sharing is an arrangement whereby a flight is operated by a carrier other than the airline whose designator code is used in schedules and on tickets. In the NPRM, we proposed to amend 14 CFR Part 257 to codify 49 U.S.C. 41712(c) (added by P.L. 111-216, sec. 210, August 1, 2010), which requires U.S. and foreign air carriers and ticket agents to disclose code-share arrangements during website schedule searches “on the first display of the website following a search of a required itinerary in a format that is easily visible to a viewer.” In addition, we proposed the following interpretations of the statutory language: (1) clarifying that this requirement covers any ticket agent “doing business in the U.S.” to include entities marketing to U.S. consumers via the internet even if the ticket agent does not have a physical presence in the United States; (2) clarifying that this requirement covers flight schedule information provided by carriers and ticket agents via mobile websites and mobile applications; and (3) clarifying that “in a format that is easily visible for a viewer” means the disclosure must appear in text format immediately adjacent to each code-share flight displayed. We sought comments on whether we should also specify minimum standards on the text size of the disclosure in relation to the text size of the schedule itself. DOT also proposed to explicitly state in the rule text that verbal disclosure of code-share arrangements must be made the first time a code-share flight is offered. Further, we proposed certain editorial revisions to the language of

Part 257 to reflect the technology changes in the airline industry's reservation and ticketing systems that have resulted in the predominant use of online reservation systems and electronic tickets.

*Comments:* Five consumer rights advocacy groups submitted comments generally in support of the Department's proposals. In their joint comments, Consumers Union and U.S. Public Interest Research Group agree with the Department's view that the requirement of 49 U.S.C. 41712(c) as codified in Part 257 should cover all websites that market to U.S. consumers. They also support having code-share information displayed or disclosed with equal prominence in all oral and written communications, website displays, printed flight schedules, and advertisements. Flyersrights.org states that airlines should be required to disclose the routes that they are flying, particularly over conflict zones. Travelers United and National Consumers League support the proposal to cover all carriers and ticket agents doing business with the U.S. public regardless of whether the business is domiciled in the United States. In their joint comments they also support the proposal to cover advertisements for flights to, from, and within the United States that are marketed to U.S. consumers. With respect to disclosures in website itinerary searches, the commenters support the proposal that disclosures must be immediately adjacent to each code-share flight. They recommend that the Department should extend the code-share disclosure to boarding passes so passengers who are not directly involved in the ticket booking process will not be confused.

A4A submitted comments on behalf of its member airlines expressing its concerns about the application of the regulation's requirements to mobile applications and noting that the statutory language does not expressly address mobile applications. A4A urges the Department to be flexible toward the application of the disclosure rule to mobile devices and software and



suggests that instead of mandating minimum font sizes and requiring that the disclosure be immediately adjacent to the entire itinerary, the Department should prioritize all of the new disclosure requirements and consider how these disclosures will fit with one another and in different ticketing platforms. Delta Air Lines opposes the proposed change in rule text that specifically requires verbal disclosure of code-share arrangements to be made the first time a code-share flight is mentioned. Delta believes that the current rule requiring verbal disclosure to be made “before booking transportation” should be interpreted as “at the end of the reservation process.” Delta argues that the proposed language is a radical departure from the Department’s stated policy of the past two decades, and that such a requirement will complicate and slow the reservation process, will increase reservations costs, and is contrary to the interests of consumers. Delta estimates that each disclosure statement would add approximately 5 seconds to a call and that it would incur \$1 million additional annual recurring cost to its reservation department should the Department adopt the proposed language. In closing, Delta argues that the Department has shown no need for such a change and the current rule provides the appropriate notice to consumers at the appropriate time. Arab Air Carrier Association (AACCA) opposes the idea that the Department should dictate code-share disclosure display format and font size on website itinerary search results. AACCA argues that the format used by the agent should govern display formats and font sizes and any costs for changes to displays should not be passed on to carriers.

Several ticket agents and ticket agent associations also submitted comments on this proposal. Travel Technology Association, American Express Global Business Travel, and Amadeus point out that the proposed rule text omitted language in the current rule that requires the airlines to provide code-share information to computer reservation systems (also known as

Global Distribution Systems or GDSs) in which they participate. The commenters state that the Department should restore the language to make it clear that airlines must share code-share information with the GDSs. With respect to code-share disclosure on mobile devices, Travel Technology Association and Amadeus state that the Department should take into consideration the limited space on mobile device displays, or the ever-changing ways in which information is disseminated to consumers through social media. These commenters state that they are not asking the Department to exempt these devices but to recognize the need for a more flexible approach. American Express Global Business Travel also urges the Department to carefully consider the impact of code-share disclosure requirements on mobile device platforms. TripAdvisor believes that the Department should exclude disclosure requirements for mobile devices less than 8 inches diagonally. In support of this position, TripAdvisor states that phones have extremely limited display space and may be further limited by the operating system and applications. In the alternative, TripAdvisor suggests that the Department should consider other disclosure methods for mobile devices such as disclosing on the first screen after a consumer selects a flight. The U.S. Tour Operators Association (USTOA) asserts that the Department's requirement for oral and telephone code-share disclosure would impermissibly exceed the specific obligation imposed by Congress under Section 41712. The American Society of Travel Agents (ASTA) believes that the target of the disclosure requirement should be the purchasers of the air transportation instead of the passengers, as it stands now, because it is not always the purchasers who would be the passengers. ASTA states that the rule should clarify that the obligation of ticket agents is fulfilled when disclosure is made to the ticket purchaser.

*DOT Responses:* The Department's current regulation on the disclosure of code-sharing and long term wet lease arrangements, 14 CFR 257.5, was designed to ensure that consumers are

aware of the identity of the airline actually operating their flight in code-sharing and long-term wet lease arrangements in domestic and international air transportation. Code-share disclosure is important because the identity of the operating carrier is a factor that affects many consumers' purchasing decisions. In that regard, we believe that codifying 49 U.S.C. 41712(c) and strengthening the code-share disclosure requirements is an effective way to prevent potential consumer confusion. The Department has carefully reviewed all relevant comments on the proposed revisions of the code-share disclosure rule in 14 CFR Part 257, and has decided to adopt the following revisions.

*Section 257.3 Definition:* In the definitions section, 14 CFR 257.3(g), we are replacing the term "Transporting carrier", which is used throughout section 257.5, with the term "Operating carrier" to refer to the carrier in a code-share or wet lease arrangement that has the operational control of a flight but does not market the flight in its own name. As explained in the NPRM, by such an amendment we are trying to achieve consistency with other recently amended consumer protection rules, see, e.g., 14 CFR 259.4(c) (code-share partners' responsibilities in tarmac delay contingency plans) and 14 CFR 399.85(e) (notice of baggage fees for code-share flights). As the definitions in section 257.3 are arranged in alphabetical order, the definition for "Operating carrier" now is under section 257.3(f), and the definition for "Ticket agent", previously under section 257.3(f), is now under 257.3(g).

*Section 257.5(a) Notice in flight itineraries and schedules:* In section 257.5(a) with respect to disclosure in flight itinerary and schedule displays, we are codifying the requirement of 49 U.S.C. 41712(c) in the rule text of 14 CFR 257.5 by requiring that website itinerary search results provided by carriers and ticket agents must disclose any code-share arrangement on the first display of the website following such a search, in a format that is easily visible to a viewer.

We are also adopting our proposed requirement that not only carriers but also all ticket agents doing business in the United States with respect to flights within, to or from the United States will be covered and must provide code-share disclosure. As we stated in the preamble of the NPRM, any ticket agent that markets to consumers in the United States, either from a brick-and-mortar office located in the United States or via an internet website that is marketed towards consumers in the United States, would be considered to be “doing business in the United States.” The requirement would cover any travel agent or other ticket agent that does not have a physical presence in the United States but has a website that is marketed to consumers in the United States and displays schedule, fare or availability information for flights within, to, or from the United States. We believe this requirement is reasonable and appropriate given the expansion of e-commerce that effectively eliminated, in many cases, the necessity of having a physical presence in a certain country for providing intangible service products such as air travel reservation service to consumers in that country. To determine whether a website is marketed to U.S. consumers with respect to code-share disclosure requirements for itinerary display (in section 257.5(a)) and in airfare advertising (in section 257.5(c)) a variety of factors will be considered — for example, whether the website is in English, whether the seller of air transportation displays prices in U.S. dollars, whether the seller uses banner advertisements or highlights special deals for flights to or from the United States, whether the seller has an option

on its website that differentiates sites or pages designed for U.S. and other consumers, and whether the website distinguishes between persons with addresses or telephone numbers in the United States and those outside the United States in the sales process. We note that this is consistent with the enforcement policy currently applied in connection with the Department's full fare advertising rule, 14 CFR 399.84.

The second requirement that we adopt here is that, for a code-share disclosure in an itinerary search result webpage to meet the section 41712(c) requirement to be "in a format that is easily visible to a viewer," the disclosure of the operating carrier must be immediately adjacent to the itinerary displaying the flight operated under a code-share arrangement and in a font size that is not smaller than the font size of the flight identified under the marketing carrier's name and/or code in the itinerary display. Under this requirement, it is not sufficient to locate the disclosure elsewhere on the same webpage that displays all search results meeting the search criteria, such as at the very end of the webpage, with an asterisk or some other symbol next to each flight that has a code-share arrangement. In coming to this conclusion, we observed that quite often there are multiple flights that meet the search criteria so having code-share disclosures located elsewhere on the page, such as at the bottom of the page, is visually remote from the itineraries that include a code-share flight and would likely be overlooked by consumers. This is true particularly in the situation where the entire webpage does not fit on the screen display and the viewer must scroll to the bottom of the page to see the disclosure. In that case, we consider the disclosure located at the bottom of the page to not be on the "first display" following an itinerary search, as required by the statute. Accordingly, we consider disclosure of the operating carrier directly adjacent to each flight displayed with the marketing

carrier's name and/or code to best meet our goal of clearly and prominently identifying all flights that are under a code-share arrangement.

With respect to code-share disclosure in flight itinerary search results and flight schedule displays provided through mobile devices via websites specifically designed for mobile devices (mobile websites) or applications (apps), we appreciate the commenters' insight that mobile devices have limited screen display space and it is more difficult to fit all the information into one screen display. However, we also recognize that the use of mobile websites and apps is becoming more and more popular among consumers and we only expect this trend to continue with the development of technology that brings the convenience and accessibility of mobile devices to many more consumers' daily life. As such, it is important to ensure that displays on mobile devices include code-share disclosure, but it is also important to ensure that code-share disclosure requirements take into account the limitations of mobile websites and apps. As a compromise, we are adopting a simplified format for display of code-share disclosures via mobile websites and apps. Specifically, instead of disclosing the code-share arrangement as "flight 123 is operated by Jane Doe Airlines d/b/a QRS Express," where "Jane Doe Airlines" is the corporate name of the operating carrier and "QRS Express" is the brand name of the domestic code-share network (e.g., American Eagle, Delta Connection, United Express), on mobile websites and apps, carriers and ticket agents will be permitted to simply disclose the corporate name of the operating carrier, e.g. "flight 123 operated by Jane Doe Airlines." We believe this compromise is appropriate in striking a balance between sufficiently identifying the operating carrier while preserving some space on mobile displays which is more limited than space on computers. Carriers and ticket agents that are already displaying code-share disclosure information in the same manner as they are required to do on the desktop website are free to

either maintain such a display format or switch to the simplified format as discussed above. The Department will continue to monitor the development of mobile websites and apps and consider amendments to this requirement as necessary.

In connection with comments regarding the requirement for airlines to provide code-share information to the GDSs that they use, we acknowledge that the requirement was inadvertently omitted from the proposed rule text in the NPRM. We are adding the language back to the final rule text to make it clear that if an airline provides schedule information to a GDS, it is required to provide code-share information to the GDSs who can in turn provide the information to ticket agents and consumers.

*Section 257.5(b) Notice in oral communications with prospective consumers:* Section 257.5(b) requires that carriers and ticket agents must identify the actual operator of a code-share flight to a prospective consumer, “before booking air transportation,” over the telephone, or through other means of oral communication. In the preamble of the 1999 final rule implementing this requirement, we explained that the phrase “before booking transportation” reflects the Department’s enforcement policy: during a given encounter (phone call, visit, etc.) the agent or carrier may not wait until after the consumer has decided to make the reservation or purchase the ticket and disclose the code-sharing arrangement only when reading back the flight information. Instead, the disclosure must be made at the time that the schedule information is being provided to the consumer *during the “information” and “decision-making” portion of the conversation*. We then specifically rejected a carrier’s suggestion that disclosures should only be required *during the booking process*. See, 64 FR 12838, March 15, 1999 (emphasis added). We acknowledge that under the existing rule, carriers and ticket agents have a period of time starting from the first mention of a flight involving a code-share operation, through further discussion of

the flights available until before the conclusion of the information and decision-making portion of the conversation to make the disclosure.

In this final rule, we are clarifying and amending the existing requirement on oral disclosure of code-share arrangements by narrowing the time window carriers and ticket agents are allowed to provide the disclosure. Specifically, instead of having to make the disclosure at any point during the information-gathering and decision-making process, we are now requiring that the code-share information be provided the first time a code-share flight is offered to a consumer or, if no such offer was made, the first time a consumer inquires about such a flight. In adopting the new standard, we believe that requiring disclosure at a certain point rather than during a window of time provides the regulated entities a clearer threshold for compliance. In addition, a clear rule that requires disclosure during an early stage of the process benefits consumers and aligns with the online display disclosure requirements of the statute.

The Department views the statutory language in section 41712(c)(2) requiring code-share disclosure in internet schedule search to be on the first display as an indication of Congressional intent so such information will benefit consumers searching for airfares to the maximum extent in making purchasing decisions. Accordingly, we are extending this approach to code-share disclosure in oral communications to enhance information provided to consumers purchasing air transportation through telephone or in person.

We reject some commenters' view that requiring disclosure of code-share information the first time a code-share flight is mentioned will impose unreasonable cost on carriers and ticket agents. In our view, the cost is not unreasonable given the importance of the information. Delta commented that each disclosure will add 5 seconds to a telephone reservation call and estimated that complying with the disclosure requirement as proposed will add \$1 million annual recurring



cost to its reservations department. This assertion is not only unsubstantiated by underlying data, it also fails to consider that disclosing a code-share arrangement for the first time right before the prospective customer confirms the reservation may potentially cost more to carriers and ticket agents because such information disclosed at the last minute may result in some consumers deciding to revisit all the travel arrangements already made and possibly begin the reservation process again to look for flights that are operated by a different carrier. In fact, according to Delta's interpretation of the current rule, a carrier or ticket agent may stay silent about any code-share arrangements included in a number of flights that a consumer can choose from, and only disclose the code-share nature of the one flight the consumer has selected for booking. This approach completely defeats the purpose of the code-share disclosure requirement, which is to provide complete and accurate material information that may affect consumers' decision making. It is the Department's policy determination that disclosing all material information about a flight early in the reservation process, including code-share arrangements, is the most efficient way to fully use the time of the reservation agents and the consumers.

This section currently applies to, and, under this final rule, will continue to apply to, both U.S. and foreign air carriers, as well as ticket agents doing business in the United States, which is interpreted in the same manner as described in the discussion of that phrase in section 257.5(a) above. Consequently, a ticket agent that sells air transportation via a website marketed toward U.S. consumers (or that distributes other marketing material in the United States) is covered by section 257.5(b) even if the agent does not have a physical location in the United States, and such an agent must provide the disclosure required by section 259.5(b) during a telephone call placed from the United States even if the agent receives such calls at a foreign location.

*Section 257.5(c) Notice in ticket confirmations:* We have received no comments on this section and we are adopting the changes to the rule text as proposed in the NPRM. Specifically, we retain the basic requirements listed in 14 CFR 257.5(c)(1) that requires written disclosure of code-share arrangements “at the time of purchase”; each flight segment involving a code-share arrangement that has its own flight number must be identified individually with the disclosure information immediately adjacent to the flight number; and if a single-flight-number service involves one or more code-share segments, each code-share segment must be identified individually with the disclosure information immediately adjacent to that flight if there are different operating carriers on the segments. We are also deleting the language in 14 CFR 257.5(c)(2), (c)(3), and (c)(4) that contain outdated references to paper tickets. As paper tickets have predominantly been replaced by electronic tickets, the Department considers a universal requirement to provide disclosure at the time of purchase through a notice automatically generated by the reservation systems to be reasonable and not overly burdensome.

*Section 257.5(d) Notice in city-pair specific advertisements:* Paragraph (d) deals with disclosure requirements in city-pair specific advertisements. We are adopting the proposal in the NPRM to use the phrase “written advertisement” to replace the phrase “printed advertisement,” which in the current rule text refers to both advertisements printed on paper and advertisements published on the internet. We believe the word “written” is more accurate in describing both types of advertisements.

In addition, we are adding a descriptive phrase— “marketed to consumers in the United States”— in an effort to reduce the possibility of misunderstanding by specifying the scope of the disclosure requirements on internet advertisements. This is meant to clarify that the disclosure requirement applies to all internet advertisements for flights within, to or from the

United States that are marketed to consumers in the United States. Similar to the scope of the code-share disclosure requirement for flight itinerary and schedule displays, this approach is consistent with the intended scope of other air travel consumer protection rules, and ensures that internet advertisements marketed to consumers in the United States will be covered even if the hosting server for the website is located outside of the United States.

We note that this standard will cover all advertisements appearing on a carrier's or a ticket agent's own website, as well as advertisements that are presented to U.S. consumers through other paid advertising venues on the internet (such as a news media website or a travel blog website) and social media websites (such as Facebook or Twitter). In the NPRM, we sought comments with regard to whether applying the same standard to advertisements on all of these websites is reasonable and technically practical in light of the brevity of these media posting formats and we received no specific comments. Although some social media communication formats impose a character limit on postings, we do not consider at this time that such limit would warrant a more relaxed code-share disclosure rule for city-pair specific advertisements through these social media formats.

Another change proposed in this NPRM concerns the example disclosure statement in the rule text that a seller of air transportation must include in a radio or television broadcasting advertisement. The current sample statement includes the phrase "[s]ome services are provided by other airlines." Because the words "services" and "provided" cover a wide range of activities, including ground operations, customer service, etc., they do not accurately convey the information we intended to relate, which was regarding the actual operation of a flight. Accordingly, we are changing the sentence to read "[s]ome flights are operated by other airlines."

Finally, we have decided not to adopt in this final rule the suggestion by Travelers United and National Consumers League to require carriers to provide code-share information on passengers' boarding passes. Passengers have access to, and likely retain a copy of their ticket confirmation before and during their travel even if they did not purchase the tickets themselves, and the relevant code-share information is provided in the ticket confirmation as required by the current rule. To add code-share information on boarding passes could enhance code-share disclosure but we are not sure it is necessary and cost effective.

U.S. and foreign air carriers and ticket agents should be meeting these disclosure requirements for code-share arrangements by the effective date of the rule.

(4) Disclosure that Not All Carriers are Marketed

*The NPRM:* In the NPRM, the Department stated that it was considering requiring large travel agents to disclose whether they display the airfares of all carriers serving any market that can be searched on the travel agents website. We stated that many online travel agents provide flight and fare information for a significant number of carriers — but not all carriers — serving a particular city-pair market or, in some markets, online travel agents may not provide information regarding any carrier serving the market. Further, the Department stated that online travel agents do not necessarily identify the carriers whose schedule and fare information is or is not provided in search results. As a result, consumers may believe the search results provide all possible flight options for a particular city-pair market when in fact there may be other options available. As stated in the NPRM, the Advisory Committee for Aviation Consumer Protection recommended that DOT require ticket agents, including online ticket agents, to disclose the fact that they do not offer for sale all airlines' tickets, if that is the case, and to advise consumers that additional airlines may serve the route being searched, so that consumers know they may need to search

elsewhere if they want to find all available air travel options. The Department sought comment on whether to create a disclosure requirement for all ticket agents or just large ticket agents, and if so, in what manner. Specifically, the Department asked for comment on whether to require ticket agents to prominently note on their websites that not all U.S. air carriers and non-U.S. air carriers serving the United States are displayed on the website or marketed by the travel agent or to prominently display a statement in connection with a search of a particular city pair that not all airlines serving those cities are displayed on the website or marketed by the travel agent. The Department also sought comment on whether to require online travel agents to specifically identify all of the airlines that it markets.

*Comments:* Among airline commenters, some support the requirement to identify carriers marketed, while others oppose it. The Arab Air Carriers Organization, and some carriers, including Frontier, JetBlue, Southwest, and Spirit, support the proposal to require disclosure regarding carriers marketed. While A4A does not object to the requirement, it states that the Department should not require ticket agents to list carriers *not* sold. Spirit, in contrast, comments that the Department *should* require ticket agents to identify carriers *not* sold and the requirement should apply to all ticket agents, regardless of size. Spirit further argues that disclosure should be provided on every search page and, in support of its position, asserts that the lack of such a disclosure would disproportionately harm price-sensitive consumers who were not given the opportunity to learn about Spirit fares. Southwest states that consumers would benefit from knowing that search results may not include all possible flight options for a city-pair and notes that the information may prompt consumers to visit websites such as Southwest.com. Southwest proposes that all ticket agents, regardless of size, should be required to include a generic statement in search results notifying consumers that the results only include certain

carriers with which the ticket agent has an agreement. Frontier comments that some large travel agents create the impression that they market and sell air transportation of all airlines when in fact they do not; consumers are not informed that not all carriers are offered and therefore the fare or service options being presented are limited.

Consumer advocacy organizations were also divided on this issue. Consumers Union and U.S. PIRG support the requirement and state that ticket agents should disclose all airlines that serve a particular route, and which of those airlines are included in the ticket agent's marketing. Travelers United and National Consumers League (NCL) oppose the requirement, stating that the requirement would not result in a consumer net benefit, citing website clutter, among other things.

Ticket agents and their associations generally oppose requiring ticket agents to disclose carriers marketed. Travel Tech comments that no consumer harm that resulted from the lack of such a disclosure requirement has been shown. Travel Tech states that "consumers are sophisticated enough to realize that not all carriers may be displayed" and points out that, for example, Southwest advertises extensively that its fares are available only on its own website. Meanwhile, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) has issued guidance (August 19, 2013, Display of Search Results on Ticket Agent Websites) stating that Online Travel Agents (OTAs) should not use terms in search results suggesting that no flights exist that match the criteria provided by the consumer to search for and compare flight options from multiple carriers when flights may be available on carriers that the OTA does not market, so according to Travel Tech no new requirement is necessary. Travel Tech members Sabre and Travelport each filed separate comments opposing a requirement to disclose that not all carriers are marketed. Sabre states that such a requirement is unwarranted

and unjustified while Travelport states that there is no evidence that the requirement will cure any particular harm and that consumers are already aware that not all carriers distribute through online travel agencies.

ASTA also opposes the requirement, stating that there was no evidence of consumer confusion. Several individual travel agents oppose the requirement for the same reason and note that airlines are not required to disclose to consumers that travel agents may offer a greater variety of airlines and destinations from which to choose. ASTA further comments that if implemented, the requirement should be a generalized statement indicating that some carriers' services may not appear in search results.

USTOA states that the requirement is unnecessary as the issue has been addressed through enforcement policy; however, if a regulation will replace the enforcement policy, USTOA states that it would support a requirement to include a statement on ticket agents' website displays stating that the displayed schedules "may not reflect all carriers in the market." BCD Travel comments that it is unnecessary for corporate travel companies to disclose which carriers they market because these agents are incentivized to meet corporate clients' needs. Orbitz objects to a requirement that applies only to large travel agents instead of all ticket agents and states that the Department's concern that consumers may mistakenly believe that they are provided with all possible flight options is not supported by the evidence. Orbitz further states that maintaining an accurate list of all of the hundreds of airlines it markets would require regular updates and would not be useful to consumers as most of the airlines listed would not serve the city-pair the consumer is searching. Skyscanner comments that it would not be feasible to display full lists of carriers that are featured on a particular flight search tool because markets are changing regularly and any list would quickly become out of date or inaccurate. According to

Skyscanner, such a requirement would likely result in the display of inaccurate information to consumers, “despite the best efforts and intention” of the site displaying the information. Priceline comments that the requirement might make sense for “consumer-facing” websites but should not apply to corporate travel websites. Carlson Wagonlit Travel states that if such a requirement is implemented, it should apply to all ticket agents, regardless of size, and should be limited to a list on the ticket agent’s website for consumers and should not apply to corporate travel. American Express Global Business Travel echoes Travel Tech’s comments, stating that no specific consumer harm has been shown and “consumers certainly are sophisticated enough to recognize that some carriers’ services may not be available through a particular ticket agent distribution channel.”

*DOT Response:* The Department has carefully considered all of the comments and has decided not to adopt a requirement that ticket agents provide disclosure on their websites that not all carriers are marketed on their site, if that is the case. The Department recognizes that some sophisticated consumers may realize that not all airlines are marketed on all online travel agents without disclosure by the travel agents, but not all consumers have the same level of sophistication regarding the marketing of air travel. The Department maintains the view that the information is important and should be provided to consumers by ticket agents. However, we are persuaded by commenters that a disclosure requirement resembling any of the alternatives on which we sought comment is not appropriate at this time. We are concerned that a general disclosure that not all carriers are marketed on a particular website may be confusing to consumers. For example, a general disclosure may result in wasted search time for some consumers whose particular search results do in fact include all carriers and flights that service a particular route/city-pair, but who continue searching because the disclosure indicates that not all



carriers are marketed. In addition, by the time the consumer decides to purchase a flight option that was displayed in the initial search, that particular fare or flight option may no longer be available.

Regarding a more specific disclosure for each individual city-pair searched, the Department is concerned that this requirement may be overly burdensome for ticket agents. Ticket agents often market the flights of several hundred carriers serving the United States. A ticket agent may not have all flight information for a particular carrier and the information could change without notice. For example, a carrier may begin serving a destination or exit a particular market without notifying ticket agents; may provide service only seasonally; or may temporarily stop serving a particular city. Accordingly, the Department has determined that it will continue to review this issue and may address it in a future rulemaking if appropriate. In addition, the Department will consider appropriate consumer outreach and education. For example, the Department's Enforcement Office may provide information to consumers that not all carriers are marketed on travel agent websites through its consumer publications like "Fly Rights" or consumer forums. These Department actions may be in addition to or instead of engaging in a rulemaking to impose a requirement on ticket agents to disclose airlines that they market.

#### (5) Prohibition on Undisclosed Airfare Display Bias by Ticket Agents and Carriers

*The NPRM:* An electronic airline information system (EAIS) is defined in the NPRM as a system that combines air carrier or foreign air carrier schedule, fare, rule, or availability information for transmission or display via the internet or other communications system to air carriers or foreign air carriers, ticket agents, other business entities, or consumers. In the NPRM, the Department proposed prohibiting any undisclosed bias in any EAIS display of multiple

carriers' schedules, fares, rules, or availability. The regulation would require any carrier or ticket agent that provides electronic display of airfare information to provide unbiased displays or disclose the biases in the display. It would apply to all electronic displays of multiple carriers' fare and schedule information, whether the display is available on an unrestricted basis, e.g., to the general public, or is only available to travel agents who sell to the public. The requirement to provide unbiased displays or disclose biases in the display would also apply to electronic displays used for corporate travel unless a corporation agrees by contract to biases in the display used by its employees for business travel. The requirements would apply to displays provided in response to airfare inquiries made by a consumer for a particular itinerary or airfare inquiries made by a travel agent or other intermediary in the sale of air transportation for a particular itinerary. Although the regulation would require carriers and ticket agents that provide airfare information electronically to display the lowest generally available airfares and most direct routings that meet the parameters of the airfare search request, it would not prohibit displays that included biases selected by the consumer or the user of the display, such as a preferred carrier. The only prohibition would be on *undisclosed* biases. We sought comment on whether the prohibition on undisclosed display bias should be limited to airfare and routings and on the costs and benefits of such a prohibition.

In addition to the proposal regarding undisclosed display bias, the Department requested comment on whether to require any ticket agent that decides to bias its displays and disclose the existence of bias to also disclose any incentive payments it is receiving for engaging in such a display bias. We sought comment on how such disclosure should be provided and what kind of disclosure of the existence of incentive payments would be most helpful for consumers.

*Existing Guidance:* On February 1, 2011, and March 4, 2011, the Department's Enforcement Office issued guidance that stated that undisclosed display bias in search results for airline service would be considered by that office as an unfair and deceptive practice because it prevents consumers and travel agents who advise consumers from obtaining accurate and complete information on schedules and fares. Although the guidance was not mentioned in the NPRM, several commenters referred to it in their comments. The guidance provided that the manner of displaying itinerary information including carrier, lowest fares, departure times, arrival times, trip duration, or airports, must not favor or disfavor a particular carrier unless the bias is clearly and conspicuously disclosed. The guidance was sent to ticket agent trade associations, major online travel agents, and the GDSs that provide fare, schedule, and availability information to ticket agents that market or sell air transportation to consumers. The guidance was also posted and remains available on the Enforcement Office website.

*Comments Regarding Disclosure of Bias:* Consumer advocacy groups Consumers Union, US PIRG, and FlyersRights.org all support the Department's proposal to prohibit undisclosed display bias in search result displays. Consumers Union and US PIRG state that consumers should know "whether the scales are being artificially tilted in favor of certain carriers." Farelogix, a third party technology provider to the airlines, also supports the prohibition, arguing that bias can cause significant economic damage to an airline and block third parties from creating innovative solutions for the industry. Farelogix comments that it has experienced the negative impact of undisclosed biasing directly. A4A supports the proposal as it applies to ticket agents but states it should not apply to carrier websites, commenting that in the past, for example, in the Computer Reservations System (CRS) rulemaking, the Department

assumed the public was aware that a carrier would favor its own services on its own website over other carriers' services.

Several airlines also support the proposal, including Frontier, JetBlue, and Spirit. Frontier states that it supports the display bias rule because if ticket agents bias they do so in favor of large legacy airlines that have greater bargaining power than smaller carriers and are able to pay for display bias, and that this creates an unfair disadvantage to smaller carriers and to consumers. Spirit comments that undisclosed bias distorts the air travel market and subjects consumers to unfair and misleading information when travel agents and consumers are not made aware that their search results are often tailored to favor certain carriers due to undisclosed contract arrangements or payments. Spirit states that if a carrier is not shown or incentives are provided to the ticket agent for more prominently displaying a particular carrier, disclosure is important to allow consumers and travel agents to make informed decisions. United does not support or oppose the proposal but states that the rule text does not clearly reflect the Department's intent as stated in the preamble of the NPRM regarding disclosure of biasing on corporate travel websites, i.e. that disclosure is only required to the extent the bias is not agreed to by contract regarding corporate travel. Lufthansa urges the Department to exclude from this proposed rule airline and airline-alliance websites, as well as direct connections between ticket agents and airlines' internal reservations systems. Lufthansa argues that "consumers and ticket agents intuitively understand that an airline 'biases' its website and internal reservations systems to prioritize and promote its own services and those of its code-share and alliance partner airlines. Consumers and ticket agents instinctively know that they will not be able to access fares and schedules of other airlines that compete against or are not aligned with the airline whose website (and, in the case of ticket agents, internal reservations systems) they access." Further,

according to Lufthansa, there is no need for DOT to implement and apply anti-biasing rules for corporate travel arrangements that are contractually entered into by sophisticated entities that are well aware that the fares and schedules offered through their business travel programs are limited to certain airlines and do not provide the full range of available fares and schedules offered by other airlines that do not participate in a particular program.

Delta also supports requiring disclosure of any bias in a ticket agent's display to the general public. However, Delta opposes regulations that would change existing business practices in the display algorithms used by agents, including GDSs, that do not bias based on carrier identity. Delta also opposes biasing restrictions on individual carrier websites. According to Delta, a customer shopping for tickets on delta.com "knows and expects that Delta is marketing Delta flights in a manner advantageous to Delta over other carriers, but that otherwise best meets the customer's needs and search parameters."

Several commenters, including ticket agents and ticket agent associations, oppose the proposed regulation prohibiting undisclosed display bias. American Express Global Business Travel states that there is no need for rules prohibiting undisclosed display bias because the guidance issued in 2011 is sufficient, and that if any prohibition is adopted it should not cover corporate travel. USTOA also opposes the proposed regulation, stating that the existing guidance is sufficient and new regulation is not necessary, and noting that the Department decided against such a regulation in the CRS rulemaking. BCD travel also opposes the regulation, stating that it is not needed and should not apply to corporate travel arrangements where display bias is included in contractual arrangements. Carlson Wagonlit Travel also opposes the proposed regulation, noting that displaying information in a particular order is one of the services travel agents offer, and it inherently involves bias, which may be beneficial, and

should be permitted, particularly in corporate travel which involves preferred vendors and other similar corporate programs.

Travel Tech states that imposing such a disclosure requirement would “micromanage airfare displays, constituting regulatory overkill that cannot be justified in the absence of any evidence of a significant problem warranting such market intrusion.” Travel Tech states that the existing guidance is sufficient to adequately ensure transparency in the disclosure of carrier preferences in ticket agent displays, and it would not object to a simple rule applicable to any ticket agent that would require appropriate disclosure of the use of carrier identity as a ranking factor in ordering displays. Travel Tech identifies several specific concerns with the proposed rule text itself. Regarding ranking flights, the organization asserts that as drafted, the requirement to identify the lowest airfare including all mandatory fees but not including fees for optional services would not allow for sequential listings or ranking options by total cost including fees for optional services. As such, according to Travel Tech, significantly less desirable flights may be the first flights displayed, even if they involve circuitous routings, very long layovers, or two separate tickets which prevent checking through bags, or other drawbacks. Travel Tech’s comments also indicate it is unclear how the rule would apply to queries for schedule and availability that don’t seek fare information.

Regarding the ordering criteria for identifying flights, Travel Tech states that the same ordering criteria should not be required for all markets because different criteria may identify flights that meet consumer needs in different markets (e.g., international, U.S. short haul, U.S. long haul). Regarding differentiating carriers, Travel Tech objects to the requirement to treat “listed carriers” that have no contractual relationship with the GDS or OTA creating the display the same as “participating carriers” that enter into a contract with a GDS or OTA. Travel Tech

notes that a GDS or OTA may list schedules and fares (but not availability) of some carriers that are not participating carriers as a service to their users, even though the GDS or OTA does not sell the listed carriers' services. Travel Tech also comments that the proposed rule text seems to create a violation in the event of an inadvertent but inevitable data error if a GDS or OTA does not include in its system all information provided by a carrier or inadvertently publishes inaccurate information, subjecting it to the risk of a penalty. In response to the question of whether any rule regarding display bias should be limited to airfare and routings, Travel Tech states that such limitation is appropriate.

Finally, Travel Tech argues that there is no basis for applying a prohibition on undisclosed display bias to corporate booking tools. Amadeus also opposes this provision, commenting that the undisclosed display bias prohibition is not needed. According to Amadeus, the guidance on this matter issued by the Department's Enforcement Office in 2011 is sufficient. Amadeus further states that if undisclosed bias is prohibited, the rule should follow the 2011 guidance instead of the elaborate proposed rule that creates excessive regulatory intrusion into the market. As an example, Amadeus states that if it followed the proposed rule, flights with excessive connections or layovers would be displayed but the vast majority of consumers would find them unreasonable or unattractive. Travelport also opposes the prohibition, stating that the Department has not proven the inadequacy of the existing Enforcement Office guidance. Travelport states that the Department should "outline the problem to be solved by additional regulation and allow the industry to examine the evidence."

Skyscanner argues that a display bias prohibition is not beneficial to consumers, because it is incorrect to assume that "all consumers are interested in is price." To illustrate its point, Skyscanner compares flight search tools to other shopping search tools available on the internet

that allow consumers to sort display results in a variety of ways. Skyscanner states that “[s]ome display bias is essential for metasearch sites to ensure that served content is relevant to consumers.” For example, Skyscanner points out that a consumer searching for a flight may be interested in criteria such as the travel duration, the number of transfers, the number of complaints against a carrier, whether the carrier can process a booking on the device being used by the consumer, and whether the route or carrier has been popular with other travelers. Skyscanner argues that metasearch algorithms are designed to provide the user with a high-quality snapshot of the products available, taking their chosen criteria into account. Skyscanner explains that bias describes the technical processes that allow consumers to benefit from combining a large data pool with their own preferences and notes that if price was consumers’ only concern, metasearch entities would not spend time, money, and expertise developing what they find to be effective ways to provide search results. The Mercatus Center at George Mason University (Mercatus) also opposes the proposed requirement for similar reasons, stating that travel agencies compete by offering their best judgment to consumers but the proposed rule may limit travel agencies’ ability to continue to provide such judgement. Mercatus concedes that consumers may be harmed if they believe a particular site provides unbiased information on all of the options that are available but states that “most consumers shop several sites for airfare.”

*Comments Regarding Disclosure of Incentives:* Consumer advocacy groups Consumers Union and US PIRG favor disclosing incentive payments. Spirit Airlines also comments that disclosure of all companies providing incentives and a summary of the incentives should be required. However, many commenters oppose requiring disclosure of incentive payments. ASTA comments that any language at all regarding incentive payments would create a negative impression to consumers and would brand travel agents as untrustworthy. Travel Tech also



opposes requiring disclosure of travel agency incentives received from airlines. Amadeus comments that a requirement to disclose incentive payments should not include GDS payments to ticket agents because the information is of no value to consumers and has little or no relationship to any biasing. BCD Travel acknowledges that it receives incentives and states it would be detrimental to industry to disclose specifics. Carlson Wagonlit Travel comments that disclosure of incentives would provide no clear benefit and would confuse and distract consumers. USTOA acknowledges that tour operators receive incentives that may influence the information they provide but states it would be detrimental to industry to disclose specifics and proposes that if there is any disclosure requirement, it should be general and not provide details of the incentives. Several smaller travel agencies also oppose the proposed requirement, arguing that a travel agent's first priority is its clients and that incentives always serve the interest of the clients by allowing an agent to provide cheaper service for a flight on a given airline, so to force disclosure of incentive payments would only serve to demonize what is otherwise a positive thing for consumers, agents, and airlines.

*DOT Response on Undisclosed Biasing:* After reviewing and carefully considering the comments, the Department has decided to prohibit certain undisclosed bias in electronic displays that include combinations of multiple carriers' schedules, fares, or availability information, if the display is marketed to U.S. consumers or to ticket agents that market to U.S. consumers. In response to comments regarding the alleged overly prescriptive nature of the proposed rule and potential unintended consequences of adopting the rule as proposed, the Department has revised the rule text to clarify that entities still have flexibility to provide the type of routings consumers are interested in when purchasing air transportation. The rule only applies to undisclosed display bias by ticket agents or carriers, not bias requested by the users of the system. For example, if a

user filters for a particular carrier, schedule, or other criteria, and certain airlines do not provide any flight options that meet that criteria, and are consequently not displayed in search results, the Department does not consider that to be a bias that must be disclosed. Only biasing by ticket agents or carriers based on carrier identity must be disclosed – i.e., a system presents flight options that favor or disfavor individual carriers.

As discussed in greater detail below, we have decided to prohibit any undisclosed display bias favoring particular carriers over others in search results because we agree with commenters noting that undisclosed bias distorts the air travel market and potentially harms consumers that are not aware of the biasing. This rule will apply not only to ticket agents' websites but also to airline and airline alliance websites. Our rule also applies to corporate booking tools as well as displays available to the general public, but is limited to undisclosed bias that is not based on contractual arrangements.

Undisclosed display bias prevents consumers and travel agents who advise consumers from realizing that they are not receiving neutral information on schedules and fares and recognizing that they may have to look elsewhere, or take additional steps on the website, to find more accurate or complete information. Undisclosed display bias in flight search results may mislead consumers who rely on that flight search tool for neutral, complete and correct information, and result in their not looking on different websites or not taking additional steps on the website to find flight options that better meet their preferences. Undisclosed display bias by a GDS may mislead travel agents who rely on the information provided by GDSs, which in turn causes misleading information on available service options being passed on to a significant number of consumers who rely on their travel agents. Undisclosed display bias on an airline or airline alliance website may lead a consumer to book on that website when a flight on, for

example, a code-share partner's website, may better suit the consumer's needs. For example, an airline might bias its displays to favor flights that it operates over flights operated by a code-share partner even though the flights operated by the code-share partner may have a lower price or schedule that better suits the consumer. When travel agents or consumers are unaware that information they thought was neutral is, in fact, biased, they may decide to book relatively inferior flights when other flights might better meet those travelers' needs, for example, in terms of price or scheduling.

In connection with biasing that results from business arrangements or business disputes, we recognize that commercial harm to airlines resulting from biasing may be a business matter but it also harms consumers if it is not disclosed. Further, to the extent undisclosed biasing is used to hinder competition in the distribution market, it potentially stifles innovation that would provide consumer benefits. Accordingly, the rule generally requires entities that operate systems displaying fare, schedule or availability information for multiple carriers to display the information for each carrier equitably with that of all other carriers marketed on that system. In the alternative, entities that wish to alter their displays to favor or disfavor any particular carrier are free to do so if the fact that a carrier is favored or disfavored is disclosed and there is no misrepresentation that the information is being displayed in a neutral manner.

To the extent a carrier or ticket agent operating an EAIS engages in display bias based on carrier identity, it must clearly and conspicuously disclose that fact. This applies to both ticket agents and carriers. For example, if a ticket agent favors or disfavors a particular carrier, that bias must be disclosed. Similarly, in connection with systems operated by carriers or carrier alliances, if carrier-identity is a factor in how flights are displayed, that must be disclosed. The notice about display bias may not be in an obscure location as that would not provide sufficient

notice to avoid consumer harm. Accordingly, if there is carrier identity bias, we require that the notice appear prominently at the top of the first search result display presented to the user in response to the user-selected search criteria. The notice must specifically state that the order of flights is not neutral with respect to carrier identity.

*Response to Display Issues Identified in the Comments:* Some commenters identified rule text that appeared to impose requirements that would result in unintended consequences. For example, concerns were expressed that the proposed rule text would require an EAIS to display the lowest generally available airfare without allowing screening out of certain flight options based on unreasonably lengthy or circuitous routings or similar undesirable characteristics. Concerns were also expressed that the requirement to rank flights by the lowest airfare may not be the best ranking method for consumers as it may be more beneficial to rank by total cost which would include not only mandatory fees but also fees for optional services. We found these comments to be persuasive and have made changes to the final rule. This final rule does not contain a requirement for an EAIS to rank by the lowest generally available airfare, or any other specific parameter. Instead, it requires that each EAIS display information in an objective manner, based either on search criteria selected by the user (e.g., lowest fare, lowest cost, date and time of travel, class of service, stopovers, total elapsed time or duration of travel, number of stops, limitations on carriers to be used, particular airport(s), number of passengers, etc.) or default criteria established by the carrier or agent.

*Ranking Flight Options and Innovation in Displays:* Regarding the ranking of flights, the rule requires systems to identify the flight options that meet the parameters set by the user of the system without ranking based on any undisclosed bias based on carrier identity. However, systems are not precluded from setting default display parameters that are not deceptive or

offering users the option to choose a variety of display methods within those parameters. Just as systems already offer consumers many options, such as displaying only non-stop flights in search results, or ranking flights by cost, or elapsed time, or departure time, systems are not precluded from offering additional options for displaying search results. Similarly, as stated above, if a consumer specifies a particular carrier or carriers in search parameters, displaying responsive search results would not be considered undisclosed bias. Many commenters on the various proposals in this rulemaking have emphasized the importance of allowing innovation in the display of airfare and ancillary service fee information. We agree that innovation is beneficial to consumers and encourage systems to offer a variety of options for search result displays. Based on comments in this rulemaking and on public statements from a variety of industry participants, we understand that many airlines and ticket agents are already working on providing more options for consumers to choose in displaying search results. We anticipate in the future that systems will continue to add more sorting mechanisms that allow consumers to choose flight ranking options based on their specific need, for example, fare plus cost of specific ancillary services chosen by the consumer.

We agree with Skyscanner that consumers will benefit from innovations that allow different entities to improve and expand on how to respond to consumer searches and to display search results. We encourage such innovation and note that the requirement to disclose any biases that are built into the system does not preclude creativity in designing displays. For example, existing flight search tools are already providing various display formats and sorting mechanisms that allow consumers to choose how they want their flight options prioritized.

This is also relevant to Skyscanner's comment that consumers may be interested in a variety of factors when selecting a flight and that flight search tools offer a "snapshot" of

options. We agree that consumers consider a variety of factors when searching for a flight and anticipate that flight search tools will continue to evolve, offering more and more information and ways to sort flight options. However, metasearch entities do not market flight search tools as offering a “snapshot,” they market themselves as a neutral source of as much flight information as is available on the internet. Consumers should know about the factors that may impact or limit what flight information is displayed and how it is displayed.

*Ordering Criteria; Listed and Participating Carriers:* Travel Tech’s comments also state that the proposed rule text appears to require the same ordering criteria for identifying flights regardless of the market (e.g., international, U.S. short haul, U.S. long haul). We agree that as long as the criteria are not based on carrier identity, different criteria may better identify flights that meet consumers’ specific needs depending on the market. Accordingly, we are not requiring that the same ordering criteria be used for every market. Rather, the search results should match the user-selected criteria and disclose any bias based on carrier identity. Regarding differentiating carriers, Travel Tech objects to the requirement to treat “listed carriers” (carriers that have no contractual relationship with the GDS or OTA) the same as “participating carriers” (carriers that enter into a contract with a GDS or OTA). Travel Tech suggests that if an OTA or GDS chooses to provide a “listed” carrier’s fare and schedule information then there should be no requirement to display that carrier’s flight information equitably with the information of participating carriers. We agree that there is no requirement to display a non-participating carrier’s flight information. However, if an agent chooses to display a non-participating carrier’s flight information, then it must display it equitably or disclose that the information is not being displayed equitably because otherwise consumers could be misled or deceived into thinking that the information is being displayed in a neutral manner. Travel Tech also noted that in many

cases the OTA or GDS does not have availability information for carriers that are only listed and not participating. To the extent ticket agents provide fare and schedule information without availability information, this rule requires that, absent disclosure about bias, the information must be provided in a manner that does not favor or disfavor a particular carrier. Finally, Travel Tech commented that “[i]f adopted as proposed, the rule could encourage GDSs and OTAs to simply remove all information about non-participating carriers from their systems, another perverse result that would clearly not benefit consumers.” It is our understanding that GDSs and OTAs make a business decision to provide consumers with non-participating carrier flight information even though those carriers do not provide all fare, schedule, and availability information and do not pay the same fees to GDSs or OTAs as participating carriers. To the extent that entities such as those represented by Travel Tech determine that they have a greater interest in not providing non-participating carriers’ information rather than disclosing it in an unbiased manner or disclosing that the information is not provided in an unbiased manner, that is a business decision that must be made by each entity. However, we are not persuaded that this is sufficient reason to allow a GDS or OTA to bias displays in a manner that ranks differently those carriers that do not “participate,” or pay fees to the GDS or OTA, without disclosing that information to consumers.

*Biasing Based on Carrier-Identity on Airline and Airline Alliance Websites:* Regarding airline and airline alliance websites’ displays that incorporate the flights of more than one carrier, we also believe consumers are entitled to be informed of any biasing that occurs in those displays. We note that most, if not all, alliance and carrier websites that display flight options for alliance or code-share flights already provide information regarding the carriers that are marketed on the website. The additional disclosure that would be necessary would be a

statement regarding the manner in which the display favors or disfavors particular carriers. For example, if an alliance website marketed to U.S. consumers biases its displays to favor carriers that operate flights to and from the United States over carriers that only market flights to and from the United States that are operated by another carrier under the code of the marketing carrier, then that fact should be disclosed to consumers.

*Corporate Booking Tools:* We disagree with the comments that there is no basis for applying a prohibition on undisclosed display bias to corporate booking tools. To the extent that bias is built into corporate booking tool displays pursuant to a contractual agreement that makes clear the parameters of the displays, we would not consider such bias to be biasing that must be disclosed to users of the system and agree that there is no need to disclose that information on every display of search results. However, if changes to a corporate booking tool display were made by the operator of the system so that flight options were biased based on carrier identity, we would consider that to be a violation of the rule and an unfair or deceptive practice unless the bias based on carrier identity was disclosed as required by the rule. For example, if an entity operates a corporate booking tool under a contract with a corporation, and the entity operating the tool is having a business dispute with a particular carrier, that entity may not remove the carrier's flights from search results or place them in a less favorable location in the search results, independent of any contractual terms to favor or disfavor particular carriers in that particular corporate booking tool, without providing disclosure to the users of the booking tool in the manner required by this rule. Business entities benefit from the requirement for biases to be disclosed as they may have policies that require selection of best available fare, or other financial, recordkeeping, or auditing requirements. Further, a business entity that does not have contracts providing benefits or discounts on a particular carrier may still rely on corporate



management tools to book business travel as well as to integrate cost and booking data for its travel into its own systems. Those entities are also entitled to be informed if the flight options being displayed reflect bias based on carrier-identity.

*Incentives:* We have decided not to require the disclosure of information regarding incentives. We have determined that the prohibition on undisclosed biasing is sufficient to protect consumers without mandating the disclosure of specific information about incentive payments. Regardless of the reasons for the biasing, whether due to undisclosed contract arrangements, commercial disputes, or financial incentives, consumers should be made aware when a display is not neutral with respect to carrier identity. Being informed that carrier identity is a factor in the display of flight options, regardless of underlying reason, likely would be useful to consumers. However, we do not see a benefit to requiring disclosure of incentives such as specific commercial arrangements or dollar amounts when there are a variety of other reasons, in addition to incentive payments, that may lead an entity to bias its display. We believe providing information on incentives might result in consumer confusion regarding the significance of the information and not necessarily provide information that would be helpful in making decisions about air travel purchases. We also agree with commenters that it would be difficult to define how and what types of incentives should be disclosed. Further, we acknowledge that disclosure may touch on sensitive commercial information. As such, this final rule does not require the disclosure of incentive payments but simply prohibits undisclosed biasing based on carrier identity.

(6) Amendments/corrections to second *Enhancing Airline Passenger Protections* rule and certain other provisions

a. Standard Applicable to Reportable Tarmac Delays Under Part 244

In 14 CFR Part 244, the Department requires U.S. and foreign air carriers to file Form 244 “Tarmac Delay Report” with the Department with respect to any covered flight that experienced a lengthy departure or arrival delay on the tarmac at a large, medium, small, or non-hub U.S. airport. A “lengthy” tarmac delay for purposes of this report is defined in Part 244 as any tarmac delay that lasts “three hours or more.” This standard is inconsistent with the standard applicable to the tarmac delay contingency plan requirements under 14 CFR Part 259 and the existing reporting requirements of BTS, both of which refer to any tarmac delay of “more than three hours.” In a Frequently Asked Questions document issued by the Department following the issuance of the final rule for Part 244, we acknowledged this discrepancy and stated that we intend to correct it in a future rulemaking. In the NPRM for the instant proceeding, we proposed to amend the rule text of Part 244 and to adopt the “more than three hours” standard so this Part would be consistent with other Parts of our rules. Under this action, any tarmac delay that lasts exactly three hours would not be covered under the requirements of Part 244. We received no comments on this proposal and are adopting it as proposed.

b. Civil Penalty for Tarmac Delay Violations

In the NPRM, we proposed to amend the tarmac delay rule to clarify that the Department may impose penalties for tarmac delay violations on a per-passenger basis. We received numerous comments opposing this proposal, primarily from carriers and carrier associations stating that the Department lacks statutory authority to impose such a civil penalty on a per-passenger basis.

Since the tarmac delay rule became effective in 2011, the Department’s Enforcement Office has maintained that even if all of the violations took place on a single flight, it is not

limited to a single civil penalty per flight for tarmac delay violations. It has consistently exercised its discretion and assessed civil penalties for tarmac delay violations on a per-passenger basis, through consent orders that have become actions of the Department. The Enforcement Office has taken the position that the Department has the authority to assess a civil penalty on a per-passenger basis, based on 49 U.S.C. 41712, which prohibits unfair or deceptive practices, and 49 U.S.C. 42301, which requires that carriers adhere to their tarmac delay contingency plans.

Nonetheless, the Department has decided not to amend the tarmac delay rule as we had proposed on this particular issue. Instead, the Enforcement Office will continue to exercise its discretion to enforce the tarmac delay rule as appropriate, on a case-by-case basis.

c. *Required Oral Disclosure of Material Restrictions on Travel Vouchers Offered to Potential Volunteers In Oversale Situations Under Part 250*

The second Enhancing Airline Passenger Protections rule amended the Department's Oversales rule (14 CFR Part 250) in a number of ways. One of the issues was requiring oral disclosure of any material restrictions on travel vouchers offered to both voluntarily and involuntarily bumped passengers. The preamble discussed extensively the reasons for adopting this new provision. But inadvertently, the rule text in Part 250 only requires oral disclosures to passengers who are involuntarily denied boarding. The rule text, as it currently stands, allows carriers to provide such disclosure solely by written notice to passengers who are orally solicited to be volunteers in exchange for travel vouchers. We proposed in the NPRM to require carriers to provide oral notification of restrictions to these passengers who are solicited to volunteer.

Travelers United and National Consumers League submitted joint comments in support of this proposal but urge the Department to go further by requiring gate agents to verbally disclose to passengers who are involuntarily denied boarding that they are eligible to receive the

maximum amounts of denied boarding compensation in cash for domestic and international flights. The commenters state that such disclosure would put consumers in an educated position when dealing with denied boarding situations. The commenters further state that basic consumer rights involving compensation should be explained in writing by airlines on ticket itineraries and computer generated boarding passes to include compensation for lost luggage, denied boarding and flight delays from Europe to the United States and within Europe.

Spirit Airlines opposes the Department's proposal to require gate attendants to provide a verbal explanation of the terms of vouchers given to volunteers in an overbooking situation. Spirit states that the Department lacks any demonstrable evidence that consumers are harmed by receiving only written disclosures. Spirit states that it would first ask the passengers being solicited to volunteer to read the terms of the vouchers and check a box to state that they agree to the terms and conditions. Spirit asserts that it is completely impractical to require a gate agent to give a private presentation of the material restriction applicable to the travel voucher to each potential volunteer.

The Department continues to believe that oral notification of material restrictions of vouchers is necessary especially when passengers being solicited to volunteer their seats are constrained by time pressure to make a quick decision as to whether to volunteer. We further believe that the written notice that is often embedded in the printed contents of the travel voucher is hard for passenger to review and comprehend in a short time before he or she commits to the acceptance of the voucher. By adopting this requirement, we note that a brief oral summary of the material restrictions applicable to the travel vouchers delivered through the gate PA system following the announcement of a request for volunteers would not place an unreasonable burden on carriers and would benefit consumers by offering them a clear and precise summary

description of what they are receiving in exchange for giving up their seats. Such verbal disclosure is not required to be provided individually to each potential volunteer. We expect such disclosure would reduce the likelihood of consumer confusion that in turn would reduce complaints filed with carriers and the cost associated with carriers' handling of these complaints. With respect to the suggestion of Travelers United and National Consumers League to require verbal disclosure of maximum denied boarding compensation amounts to passengers denied boarding involuntarily, and the suggestions to include compensation amounts on boarding passes, we decline to address these proposals in this final rule because they are beyond the scope of our Notice of Proposed Rulemaking.

d. Limitation of Flight Status Notification Requirement of 14 CFR 259.8

Guidance in the *Frequently Asked Questions* that accompanied the second Enhancing Airline Passenger Protections final rule limits the flight status notification requirement in 14 CFR 259.8 to any qualified flight status changes that occur within seven calendar days prior to the scheduled date of the operation. In the NPRM for the instant proceeding, we proposed to codify this standard in the rule. We received no comments on this proposal. We adopt the "seven-calendar-day" timeframe in this final rule as we recognize that the closer to the date of the scheduled operations, the more important it is for carriers to provide notice of a flight status change promptly. Limiting the flights for which carriers are required to comply with section 259.8 according their departure timeframe will also reduce carriers' burdens and ensure that their primary focus is on those flights where the status change would have the most significant impact on consumers. We emphasize, however, that notifications of changes that occur earlier than the seven-day threshold are still required to be delivered to the passengers "in a timely manner" by the carriers as provided by 14 CFR 259.5(b)(10).

We are also adopting some proposed editorial changes to section 259.8 to clarify that flight status change notifications required in this section should be provided not only to passengers, but also to any member of the public who may be affected by the changes and who subscribes or attempts to subscribe to a flight status notification system, including persons meeting passengers at airports or escorting them to or from airports. In this regard, we are changing the word “passengers” to “consumers” in the title of section 259.8, changing the first instance of the word “passengers” in subsection 259.8(a)(1) to the phrase “passengers and other interested persons,” and changing the second instance of that word to “subscribers.”

e. Removing the Rebating Provision in Section 399.80(h)

14 CFR 399.80(h) of DOT’s Statements of General Policy states that it is an unfair or deceptive practice or unfair method of competition for a ticket agent to advertise or sell air transportation at less than the rates specified in the tariff of the air carrier, or offer rebates or concessions, or permit persons to obtain air transportation at less than the lawful fares and rates. In the NPRM for this proceeding, we proposed to remove this provision. It is a vestige of the period before deregulation of the airline industry. Domestic air fares were deregulated effective 1983, and in most cases international air fares to and from the United States are no longer included in tariffs that specify “lawful” fares. In those markets where international fares are still subject to regulation, carriers that do not comply with their tariff are potentially subject to enforcement action under 49 U.S.C. 41510 concerning adherence to tariffs or 49 U.S.C. 41712 concerning unfair or deceptive practices and unfair methods of competition (the statutory basis for section 399.80(h)). The Department’s Enforcement Office has said that it will pursue enforcement action against a carrier that does not comply with its tariff when there is clear evidence of a pattern of direct fraud against consumers or deception, invidious discrimination, or

violations of the antitrust laws. It has been the longstanding policy of that office to decline to prosecute instances of noncompliance with tariff obligations that result in benefits to consumers absent clear evidence of such fraud, deception, discrimination or antitrust violations. (See the Frequently Asked Questions for “Rule #2” of the Enhancing Airline Passenger Protections regulation, [www.transportation.gov/individuals/air-consumer/aviation-rules](http://www.transportation.gov/individuals/air-consumer/aviation-rules), section X, question 38a, footnote 1.) There have been no enforcement actions solely for tariff compliance for over 20 years, and should such action become appropriate in the future, it can proceed under the authority of sections 41510 or 41712.

The American Society of Travel Agents supported the proposal to remove this provision. There were no other comments on this issue. As indicated above, 14 CFR 399.80(h) is not necessary and consequently we are removing this provision.

f. *Removing Part 255 Pursuant to Its Sunset Provision*

We are removing the rule text of 14 CFR Part 255 pursuant to section 255.8 that provides that Part 255 shall terminate on July 31, 2004, unless extended by a document published in the Federal Register. We are replacing the text of Part 255 with “Reserved.”

## **Regulatory Analyses and Notices**

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation’s Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Executive Order and Executive Order 13563. This section contains a summary of costs and benefits associated with this final rule. More detail on

the economic impact of this final rule can be found in the Regulatory Impact Analysis (RIA), which is available in the docket.

The RIA provides information on the benefits and costs associated with the Final Rule. The rule is not economically significant, as the costs which were able to be quantified, which relate only to the requirements that expand the definition of “reporting carrier” and the reporting requirements for reporting carriers, totaled \$7.74 over a ten-year period, or an annualized cost of \$0.96 million, when discounted using a seven percent rate. Any potential additional costs which could not be quantified are expected to be minimal. The benefits could not be quantified and monetized with reasonable accuracy for the Rule and thus, were evaluated qualitatively.

*Provision 1: Expand “Reporting Carrier” Pool and Provision 2: Expand Reporting Requirements for Reporting Carriers*

Provision 1 expands the “reporting carrier” threshold to include more carriers by lowering the threshold for “reporting carrier” to 0.50 percent of domestic scheduled passenger revenues. Provision 2 expands the information that each reporting carrier is required to submit to USDOT to include an additional set of performance data for the carrier’s domestic code-share flight segments operated by a partner.

Reporting carriers are required to submit the following flight performance data regularly:

- BTS Form 234 “On-Time Performance Report” on a *monthly* basis;
- Report baggage mishandling, statistics *monthly*;
- BTS Form 251 regarding denied boarding/oversales on a *quarterly* basis; and
- Lengthy tarmac delays and incidents relating to transport of animals, when/if they occur.



In addition, reporting carriers are currently required to post on-time performance data on their websites for each flight they operate and for each flight their U.S. code-share partners operate.

Provisions 1 and 2 will lead to additional performance data reported to the BTS, and in turn made available to consumers through publication in the Air Travel Consumer Report. In addition, new reporting carriers that market directly to consumers will now post on-time performance data on their websites for each flight they operate and for each flight its U.S. code-share partners operate. Several larger regional carriers and some of the smaller national carriers will provide a great deal of information regarding their performance to BTS. The public will now be able to compare the performance of these newly reporting carriers across a range of critical performance indicators (e.g. on-time performance, rate of mishandled baggage, etc.).

The costs to carriers are calculated by multiplying the number of impacted carriers by the one-time programming cost to collect and report data and on-going costs to process and report data to the Department. Additional costs associated with training for data gathering and for carriers to report performance data of code-share partners were identified but not quantified or monetized, but are not expected to be very significant.

**Table 1: Estimated Costs for Provision 1 and 2**

<b>Reporting Threshold 0.50%</b> <b>Reporting Carriers to Provide Data for Code-Share Flights</b>			
	<b>2017</b> <i>(First Year – set-up costs)</i>	<b>2018</b> <i>(Second Year – ongoing costs)</i>	<b>2017 – 2026</b> <b>(Ten Years)</b>
<i>Number of newly reporting carriers who market flights</i>	1		
<i>One-time set-up cost per carrier to post flight delay information to consumers, \$/carrier</i>	\$441,914		

<b>Reporting Threshold 0.50%</b> <b>Reporting Carriers to Provide Data for Code-Share Flights</b>			
	<b>2017</b> <i>(First Year – set-up costs)</i>	<b>2018</b> <i>(Second Year – ongoing costs)</i>	<b>2017 – 2026</b> <b>(Ten Years)</b>
<b>Total one-time set-up costs for newly reporting carriers who market flights to post on-time performance information to consumers, \$</b>	<b>\$441,914</b>		<b>\$441,914</b>
<i>One-time set-up cost per carrier to be able to collect/report performance data for USDOT, \$/carrier</i>	\$106,173		
<i>Number of newly reporting carriers</i>	7		
<b>Total one-time set-up costs for all newly reporting carriers to collect/report performance data to USDOT, \$</b>	<b>\$743,213</b>		<b>\$743,213</b>
<i>Per carrier one-time set-up costs for newly reporting carriers and code-share partners to set up system for revised reporting mishandled baggage rates</i>	\$8,000		
<i>Number of newly reporting carriers</i>	7		
<i>Number of code share partnerings, for newly reporting carriers only and their domestic code-share segments</i>	8		
<b>Total one-time set-up costs for newly reporting carriers and code-share partners to set up system for revised reporting mishandled baggage rates</b>	<b>\$120,000</b>		<b>\$120,000</b>
<i>One-time setup cost to create a link between reporting carriers and code-share partners to share code-share performance data</i>	\$106,173		
<i>Total links established between reporting carriers and code-share partners</i>	17		
<b>Total one-time set-up costs for reporting carriers and code-share partners to establish links to transmit data, \$</b>	<b>\$1,804,947</b>		<b>\$1,804,947</b>
<i>Hours per carrier for filling performance data Form 234 (on-time performance), Hrs/carrier</i>		240	
<i>Hours per carrier for filling performance data Form 251 (denied boarding/oversales), Hrs/carrier</i>		16	
<i>Hourly labor costs of reporting, \$/Hr</i>		\$94.57	

Reporting Threshold 0.50% Reporting Carriers to Provide Data for Code-Share Flights			
	2017  (First Year – set-up costs)	2018  (Second Year – ongoing costs)	2017 – 2026  (Ten Years)
Total ongoing labor costs for newly reporting carriers to collect and report data on their own flights, \$		\$169,464	\$1,600,470
Number of current or newly reporting carriers who have at least one code-share partner		9	
Additional hours per reporting carrier to report performance data if filing separate reports for code-share partners and main carriers, Hrs/carrier		384	
Total ongoing labor costs for reporting carriers to collect and report data on their code-share flights, \$		\$544,70	\$5,144,368
Annual cost of Report Preparation for mishandled baggage		\$2,969	
Number of newly reporting carriers		7	
Total costs for newly reporting carriers to prepare annual reports for mishandled baggage		\$20,783	\$187,047
Number of passengers on newly reporting carriers (0.5%)		64,122,957	
Passengers of newly reporting carriers with checked wheelchairs and scooters,		705,353	
additional cost per item/passenger for the airlines to enter data re wheelchairs and scooters		\$0.036	
Total ongoing data entry costs for newly reporting carriers to enter data re wheelchairs and scooters		\$25,393	\$251,795
Total Component Costs (millions)			
Undiscounted costs	\$3.11	\$0.76	\$10.29
Discounted costs (7%)	\$2.91	\$0.66	\$7.74

\* The hourly labor cost for reporting is an average of hourly rates presented in *Enhancing Airline Passenger Protections Final Rule* of April 25, 2011 RIA and 2003 hourly rates for this specific technical work provided by a reporting carrier which shared this confidential data under agreement that they would not be named publically. The hourly labor cost for reporting includes benefits and supervisory review time. It is adjusted in years going forward by 1.6 percent annually during the study period. Refer to the RIA for detailed information.

*Provision 3: Disclosure of Code-Share Segments in Schedules, Advertisements and Communications with Consumers*

This provision of the Rule clarifies the Department's code-share disclosure regulation to ensure that carriers and ticket agents disclose any code-share arrangements in schedules, advertisements and communications with consumers. It amends the Department's code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents must disclose any code-share arrangements on their websites, including mobile websites and applications; clarifies the format in which that information must be displayed; and adds a requirement that verbal codeshare disclosures be made the first time a flight involving a code-share arrangement is offered to consumers or inquired about by consumers during telephone or in person conversations. The provision is very similar to that presented in the NPRM, on which the public provided comments.

Much of the substance of Provision 3 is already in effect, as existing statute (49 U.S.C. 41712(c)) already requires that carriers and ticket agents disclose their code-shared segments, and therefore all carriers and ticket agencies should already be complying with most of this requirement. The aspect of this provision which is new is the specification of *when* during the booking process a carrier or ticket agent must disclose the code-share information. The existing rule requires airlines and ticket agents to disclose code-share information to the consumer "before booking transportation" which the Department has explained means at any point during the information-gathering and decision-making process; the new rule's provision stipulates that the disclosure must be made at the first time a flight involving a code-share arrangement is mentioned or offered to consumers. Benefits from this provision will arise from the requirement that verbal code-share disclosures should be made the first time a flight involving a code-share arrangement is mentioned or offered to consumers and will include some time savings for a

small number of consumers during ticket reservations and purchase. Since this provision mostly codifies and clarifies existing statute, there are few costs associated with it. Some costs will arise, though, as some carriers may have longer reservation calls and increased training costs. The most notable additional costs would be borne by those carriers and ticket agents that currently do not present code-share information at the first mention of a flight during a reservation call or in-person booking. These carriers and ticket agents may have slightly longer reservation calls and longer in-person bookings.

*Provision 4: Prohibition on Undisclosed Biasing Based on Carrier Identity*

The Department is aware of instances in which GDSs and large OTAs have manipulated flight search results and provided biased or filtered flight and fare information that disfavored the flights of the airline that was the target of the biasing. These incidents occurred in the course of business disputes when certain GDSs and OTAs influenced and threatened to influence itinerary search results to disfavor particular carriers' flights or not display certain flights in search results. The display bias was not disclosed to consumers or ticket agents that market to consumers. Thus, the fifth provision of the rule prohibits undisclosed biasing by carriers and ticket agents in any online displays of the fare, schedule or availability information of multiple carriers. This provision applies to online travel agencies, corporate booking tools, and carrier and carrier alliance websites and is substantially the same as presented in the NPRM.

Undisclosed bias in the display of flight search results can distort the air travel market and potentially harm consumers that are not aware of the biasing. If consumers assume that search results contain no bias and that flights are ranked by lowest fare (or other factors which they can select) they may not fully examine all the results, potentially missing some flights which are either cheaper or a better match for their criteria but are ranked lower. Ensuring that

online ticket agents disclose whether they use criteria besides those chosen by the consumer for presenting search results will alert consumers to any potential bias. It would still be the consumers' responsibility to review the results carefully, but there will be greater transparency in the search results, decreasing chances of a misinformed consumer.

Additional costs to carriers and travel agents of this provision should be minimal. The only additional costs of instituting this provision would be small programming costs to add a disclosure specifying what factors or biases, if any, beyond price and those which can be specified by the consumer are used to display search results. Since these disclosures should be relatively simple statements and are not expected to change frequently, these per entity programming costs should be small. Additionally, these costs would not be incurred by all carriers and ticket agents, only by those which use biases or other non-consumer specified factors when organizing flight search results.

#### Alternatives Considered

The Department considered multiple alternatives to individual provisions of this Final Rule. Costs could only be quantitatively estimated for one of these alternatives -- that of lowering the reporting threshold from 1.0 percent of domestic passenger revenue to 0.25 percent, instead of to 0.5 percent as adopted in the final rule. Costs under this alternative increased from \$7.74 million over ten years to \$9.44 million (both discounted at 7 percent); or higher annualized costs of \$1.18 million versus \$0.96 million.

#### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. This

rule will impact a substantial number of small entities, but the economic impact will not be significant.

The provisions of this rule are:

1. Expand the pool of carriers that report on-time performance, mishandled baggage, and oversales data to the Department (often called “reporting carriers”) from carriers which account for at least 1.0 percent of domestic scheduled passenger revenues (as currently required) to those carriers which account for at least 0.5 percent of domestic scheduled passenger revenues;
2. Expand reporting requirements for covered carriers that market code-share flights to include an additional set of reports for the on-time performance, mishandled baggage, and oversales data of their domestic code-share flights operated by partners;
3. Ensure the disclosure of code-share arrangements in all marketing carriers’ schedules, advertisements and communications with consumers; and
4. Prohibit undisclosed display bias by airlines and ticket agents.

This Rule will impact small carriers and small ticket agents that market air transportation. For purposes of rules promulgated by the Office of the Secretary of Transportation regarding aviation economic and consumer matters, an airline is a small entity for purposes of the Regulatory Flexibility Act if it provides air transportation only with aircraft having 60 or fewer seats and no more than 18,000 pounds payload capacity. The Small Business Administration (SBA) size standard for small business for both travel agents and tour operators is \$20.5 million in average annual receipts (SBA does not have a size standard for ticket agents as defined by the Department; travel agents and tour operators are most applicable categories which such data was found).

The Department determined that this final rule is not likely to have a significant economic impact, although it will impact a substantial number of small entities. Provisions 1 and 2 of the Rule will only affect one small carrier; the Department estimated that this carrier would experience a cost of \$326,520 in the first year and \$491,612 over a 10-year period (discounted at a 7 percent discount rate). A substantial number of small travel agencies and tour operators will be directly impacted by this Rule. However, the Department estimates that the costs of compliance will be minimal for each individual travel agency and/or tour operator.

Since the Department could not estimate all of the costs to small entities of this rule, it prepared a FRFA. The Department considered multiple alternatives to individual provisions of this Final Rule. Costs could only be quantitatively estimated for one of the alternatives to Provision 1—that of lowering the reporting threshold from 1.0 percent of domestic passenger revenue to 0.25 percent, instead of to 0.5 percent as adopted in the final rule.

**C. Executive Order 13132 (Federalism)**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). The rule does not contain any provision that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**D. Executive Order 13084**



This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the provisions in the final rule significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

**E. Paperwork Reduction Act**

As required by the Paperwork Reduction Act of 1995, the Department has submitted the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve those proposed collections of information that are part of this final rule and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, 1200 New Jersey Avenue, SE, Washington, D.C. 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control

number, if required. The Department intends to renew the OMB control number for the information collection requirements resulting from this rulemaking action. The OMB control number, when renewed, will be announced by separate notice in the Federal Register.

The ICR was previously published in the Federal Register as part of the NPRM. *See* 79 FR 29995. The Department invited interested persons to submit comments on any aspect of each of these two information collections: The first collection of information is a requirement that more carriers report on-time performance, mishandled baggage, and oversales data to the Department (i.e., expansion of reporting carriers from any U.S. airline that accounts for at least one percent of annual domestic scheduled passenger revenue to any U.S. airline that accounts for at least 0.5 percent of annual domestic scheduled-passenger revenues). The second information collection is a requirement that mainline carriers provide enhanced reporting for flights operated by their domestic code-share partners including requiring reporting carriers to separately report on-time performance, mishandled baggage, and oversales data for all domestic scheduled passenger flights marketed by the reporting carriers but operated by domestic code-share partners.

The final rule modifies the information collection titled “Reporting on-time performance/Reporting baggage-handling” (OMB No. 2138-0041), the information collection titled “Reporting oversales” (OMB No. 2138-0018), and the information collection titled “Posting on-time performance data on carrier’s website” (OMB No. 2105-0561). The first collection of information contained in the final rule is a requirement that U.S. carriers that account for at least 0.5 percent but less than one percent of the domestic scheduled passenger revenue to report to the Department the on-time performance, mishandled baggage, and oversales information for the flights they operate. As discussed above, this requirement expands the reporting requirement

from one percent of domestic scheduled passenger revenue to 0.5 percent, and therefore expanding the number of reporting carriers from 12 to 19 carriers, an increase of 7 carriers. The second collection of information requires reporting carriers that market codeshare flights operated by another carrier to file separate reports for on-time performance, mishandled baggage, and oversales for those flights. Seven of the 19 reporting carriers will be subject to this requirement. The third information collection is a requirement that U.S. carriers that account for at least 0.5 percent but less than one percent of the domestic scheduled passenger revenue to post on-time performance records on its website, if the carrier has a website marketing flights to the consumers. One carrier will be subject to this requirement because of this final rule.

#### First information collection

*Title:* Reports by Carriers on On-time Performance and Mishandled Baggage Data For Flights Operated by Themselves and for Code-share Flights Operated by Another Carrier.

*OMB Control Number:* 2138–0041

*Type of Request:* Modification of Information Collection Request

*Respondents:* U.S. carriers operate scheduled passenger service that account for at least 0.5 percent and less than 1.0 percent of domestic scheduled passenger revenue will be required to report on-time performance and mishandled baggage data for flights that they operate. U.S. carriers operate scheduled passenger service and account for at least 0.5 percent of total domestic scheduled passenger service revenue that market code-share flights only carrying the carrier's code will be required to report separately on-time performance and mishandled baggage data for these code-share flights.

*Frequency:* For each respondent, one information set each month for on-time performance for flights they operate and one information set each month for mishandled baggage for flights they

operate; for each respondent that market code-share flight, one information set each month for on-time performance for code-share flights they market and one information set for mishandled baggage for code-share flights they market.

*Estimated Annual Burden on Respondents:* Estimated Initial Set-up Cost in the First Year: The 7 non-marketing newly reporting carriers will incur an initial cost of 1,123 hours per carrier for setting up the reporting systems needed to collect data needed for on-time performance reporting and oversales (this figure is calculated from the estimated one-time cost of \$106,173 per carrier to be able to collect/report performance data for USDOT and divided by an hourly labor cost of \$94.57, derived from which was derived from hourly labor cost estimates from a reporting carrier and research conducted for the Regulatory Evaluation in support of Consumer Rulemaking: Enhancing Airline Passenger Protections II]). The total for all newly reporting carriers will be 7,859 hours. Using an hourly labor rate of \$94.57 (derived from which was derived from hourly labor cost estimates from a reporting carrier and research conducted for the Regulatory Evaluation in support of Consumer Rulemaking: Enhancing Airline Passenger Protections II), the 7,859 hours will translate into a total of \$743,213.

All reporting carriers which have code-share partnerships will have set-up costs associated with establishing links to their partners for the necessary data reporting. The costs are estimated to be approximately \$106,173 per link, and there will be 17 such links among all the reporting carriers. The total cost will be \$1,804,947, or approximately 19,086 for all 15 reporting carriers with code-share partners.

An additional \$120,000 set-up costs for previously reporting carriers to create links to their code-share partners for mishandled baggage data, and for the seven newly reporting carriers to submit for mishandled baggage data to USDOT will total \$120,000 in the first year, or

approximately 1,269 hours .Thus, the total hour burden for this all carriers will total 28,215 hours, or \$ \$2,668,160 for first year set up costs.

Annual on-going burden will total 5,624 hours per year, which includes 240 hours per carrier for the 7 newly marketing carriers to complete form 234 for their own operated flights, an estimated 488 per carrier in ongoing data entry costs for newly reporting carriers to enter data regarding wheelchairs and scooters; and a total of 3,456 for all carriers with code-share partners (varies by carrier based on number of code-share) for reporting on-time performance and mishandled baggage data, which is filed monthly. Using an hourly labor rate of \$94.57 (derived from which was derived from hourly labor cost estimates from a reporting carrier and research conducted for the Regulatory Evaluation in support of Consumer Rulemaking: Enhancing Airline Passenger Protections II), the 5,624 will translate into a total of \$531,871 first year set-up costs.

#### Second Information Collection

*Title:* Reports by Carriers on Oversales Data For Flights Operated by Themselves and for Code-share Flights Operated by Another Carrier.

*OMB Control Number:* 2138–0018

*Type of Request:* Modification of Information Collection Request

*Respondents:* U.S. carriers operate scheduled passenger service that account for at least 0.5 percent and less than 1.0 percent of domestic scheduled passenger revenue will be required to report oversales data for flights that they operate. U.S. carriers operate scheduled passenger service and account for at least 0.5 percent of total domestic scheduled passenger service revenue that market code-share flights only carrying the carrier's code will be required to report separately oversales data for these code-share flights.

*Frequency:* For each respondent, one information set each quarter for oversales for flights they operate; for each respondent that market code-share flight, one information set each quarter for oversales for code-share flights they market.

*Estimated Annual Burden on Respondents:* The set-up costs for newly reporting carriers to put into place systems for reporting oversales data are included in the set-up costs for reporting performance data, since they are no separate systems. The annual on-going burden will be approximately 16 hours per carrier per year, or 592 hours for all 8 carriers, to report oversales data, which is filed quarterly. The 592 hours translates into \$56,000 per years when using an hourly labor cost of \$94.57 (see above).

### Third Information Collection

*Title:* Posting on-time performance data on carriers' websites

*OMB Control Number:* 2105-0561

*Type of Request:* Modification of Information Collection Request

*Respondents:* U.S. carriers operate scheduled passenger service that account for at least 0.5 percent and less than 1.0 percent of domestic scheduled passenger revenue and marketing flight directly to consumers via a website will be required to post on-time performance records for the flights it markets on its website.

*Frequency:* For each respondent, updating on-time performance records once a month on its website.

*Estimated Annual Burden on Respondents:* The 1 newly reporting carrier which markets to consumers will incur approximately 4,673 hours to set up the website to post online the on-time performance records for flights marketed on their websites. (The estimate of 4,673 is calculated

from the estimated one-time cost of posting delay information online of \$400,000 in 2009, from U.S. DOT Final RIA Enhanced Airline Passenger Protections

[[http://www.dot.gov/sites/dot.gov/files/docs/Final\\_Rule\\_on\\_Enhancing\\_Airline\\_Passenger\\_Protectons.pdf](http://www.dot.gov/sites/dot.gov/files/docs/Final_Rule_on_Enhancing_Airline_Passenger_Protectons.pdf) and brought forward to 2015 and divided by an hourly labor cost of \$94.57, which was derived from hourly labor cost estimates from a reporting carrier and research conducted for the Regulatory Evaluation in support of Consumer Rulemaking: Enhancing Airline Passenger Protections II]). Ongoing costs for updating the website are assumed to be minimal once the systems are in place and the carrier is reporting its on-time performance to BTS as required elsewhere.

#### **F. Unfunded Mandates Reform Act**

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this final rule.

#### **G. National Environmental Policy Act**

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are

present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” The purpose of this rulemaking is to enhance protections for air travelers and to improve the air travel environment. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

#### List of Subjects

##### 14 CFR Part 234

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

##### 14 CFR Part 244

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

##### 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

##### 14 CFR Part 255

Air carriers, Antitrust.

##### 14 CFR Part 256

Air carriers, Air rates and fares, Antitrust.

##### 14 CFR Part 257

Air carriers, Air rates and fares, Consumer protection, Reporting and recordkeeping requirements.

##### 14 CFR Part 259

Air carriers, Air rates and fares, Consumer protection.

##### 14 CFR Part 399



Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis,  
Consumer protection, Small businesses.

**ISSUED THIS 18TH DAY OF OCTOBER, 2016, IN WASHINGTON, D.C.**

Anthony R. Foxx  
Secretary of Transportation

Accordingly, 14 CFR chapter II is amended as follows:

**PART 234-[AMENDED]**

1. The authority citation for part 234 continues to read as follows:

**Authority:** 49 U.S.C. 329 and Sections 41708 and 41709.

2. The definitions of “reportable flight” and “reporting carrier” in § 234.2 are revised to read as follows:

**§ 234.2 Definitions.**

\* \* \* \* \*

*Reportable flight.* (1) Reportable flight for air transportation taking place before January 1, 2018 means any nonstop flight, including a mechanically delayed flight, to or from any airport within the contiguous 48 states that accounts for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Information.

(2) Reportable flight for air transportation taking place on or after January 1, 2018 means any domestic nonstop scheduled passenger flight, including a mechanically delayed flight, held out to the public under the reporting carrier’s code, to or from any U.S. large, medium, small, or non-hub airport as defined in 49 U.S.C. 47102. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Information.

*Reporting carrier.* (1) Reporting carrier for air transportation taking place before January 1, 2018 means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the most recently reported 12-month period as defined by the Department’s Office of Airline Information, and as reported to the Department pursuant to

part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information.

(2) Reporting carrier for air transportation taking place on or after January 1, 2018 means an air carrier certificated under 49 U.S.C. 41102 that accounted for at least 0.5 percent of domestic scheduled-passenger revenues in the most recently reported 12-month period as defined by the Department's Office of Airline Information, and as reported to the Department pursuant to part 241 of this chapter. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Information.

\* \* \* \* \*

3. Section 234.3 is revised to read as follows:

**§ 234.3 Applicability.**

For air transportation taking place before January 1, 2018, this part applies to reportable flights as defined in § 234.2 that are held out to the public by certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues. As stated in § 234.7, certain provisions also apply to voluntary reporting of on-time performance by carriers. For air transportation taking place on or after January 1, 2018, this part applies to reportable flights as defined in § 234.2 that are held out to the public by certificated air carriers that account for at least 0.5 percent of domestic scheduled passenger revenues. As stated in § 234.7, certain provisions also apply to voluntary reporting of on-time performance by carriers.

4. Section 234.4 is amended by revising paragraph (a) introductory text and adding paragraph (k) to read as follows:

**§ 234.4 Reporting of on-time performance.**

(a) Each reporting carrier shall file BTS Form 234 “On-Time Flight Performance Report” with the Office of Airline Information of the Department’s Bureau of Transportation Statistics on a monthly basis, setting forth the information for each of its reportable flights operated by the reporting carrier and held out to the public on the reporting carrier’s website and the websites of major online travel agencies, or in other generally recognized sources of schedule information. (See also paragraph (k) of this section.) The reportable flights include, but are not limited to, cancelled flights, mechanically cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

\* \* \* \* \*

(k) For air transportation taking place on or after January 1, 2018, each reporting carrier shall also file a separate BTS Form 234 “On-Time Flight Performance Report” with the Office of Airline Information on a monthly basis, setting forth the information for each of its reportable flights held out with only the reporting carrier’s airline designator code on the reporting carrier’s website, on the websites of major online travel agencies, or in other generally recognized sources of schedule information, and operated by any code-share partner that is a certificated air carrier or commuter air carrier. If the operating carrier of the flight is not a reporting carrier, the non-operating reporting carrier must file a BTS Form 234 “On-time Flight Performance Report” with the Office of Airline Information on a monthly basis, setting forth the information regarding those flights in a form and manner consistent with the requirements set forth in paragraph (a) through (j) of this section. If the operating carrier of the flight is a reporting carrier, the non-operating reporting carrier must file a simplified BTS Form 234 “On-Time Flight Performance

Report” with the Office of Airline Information on a monthly basis, setting forth the information regarding those flights in a form and manner consistent with the requirements set forth in paragraph (a)(1) through (a)(4) and paragraph (a)(10) of this section, and in accordance with the requirements set forth in accounting and reporting directives issued by the Office of Airline Information.

5. Section 234.6 is amended by revising paragraph (b) to read as follows:

**§ 234.6 Baggage-handling statistics.**

\* \* \* \* \*

(b) For air transportation taking place on or after January 1, 2018, each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights:

(1) The total number of checked bags enplaned, including gate checked baggage, “valet bags,” interlined bags, and wheelchairs and scooters enplaned in the aircraft cargo compartment for the reportable flights operated by the reporting carrier and separately for the reportable flights held out with only the reporting carrier’s airline designator code and operated by any code-share partner that is a certificated air carrier or commuter air carrier,

(2) The total number of wheelchairs and scooters that were enplaned in the aircraft cargo compartment for the reportable flights operated by the reporting carrier and separately for the reportable flights held out with only the reporting carrier’s airline designator code and operated by any code-share partner that is a certificated air carrier or commuter air carrier,

(3) The number of mishandled checked bags, including gate-checked baggage, “valet bags,” interlined bags and wheelchairs and scooters that were enplaned in the aircraft cargo compartment for the reportable flights operated by the reporting carrier and separately for the

reportable flights held out with only the reporting carrier's airline designator code and operated by any code-share partner that is a certificated air carrier or commuter air carrier, and

(4) The number of mishandled wheelchairs and scooters that were enplaned in the aircraft cargo compartment for the reportable flights operated by the reporting carrier and separately for the reportable flights held out with only the reporting carrier's airline designator code and operated by any code-share partner that is a certificated air carrier or commuter air carrier.

## **PART 244 - [AMENDED]**

6. The authority citation for part 244 continues to read as follows:

**Authority:** 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

7. Section 244.2 is amended by revising the last sentence of paragraph (a) to read as follows:

### **§ 244.2 Applicability.**

(a) \* \* \* Covered carriers must report all passenger operations that experience a tarmac time of more than 3 hours at a U.S. airport.

\* \* \* \* \*

8. Section 244.3 is amended by revising paragraph (a) introductory text to read as follows:

### **§ 244.3 Reporting of tarmac delay data.**

(a) Each covered carrier shall file BTS Form 244 "Tarmac Delay Report" with the Office of Airline Information of the Department's Bureau of Transportation Statistics setting forth the information for each of its covered flights that experienced a tarmac delay of more than 3 hours, including diverted flights and cancelled flights on which the passengers were boarded and then

deplaned before the cancellation. The reports are due within 15 days after the end of any month during which the carrier experienced any reportable tarmac delay of more than 3 hours at a U.S. airport. The reports shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Information, and shall contain the following information:

\* \* \* \* \*

## **PART 250 - [AMENDED]**

9. The authority citation for part 250 continues to read as follows:

**Authority:** 49 U.S.C. 329 and chapters 41102, 41301, 41708, 41709, and 41712.

10. Section 250.2b is amended by revising paragraph (c) to read as follows:

### **§ 250.2b Carriers to request volunteers for denied boarding.**

\* \* \* \* \*

(c) If a carrier offers free or reduced rate air transportation as compensation to volunteers, the carrier must disclose all material restrictions, including but not limited to administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer before the passenger decides whether to give up his or her confirmed reserved space on the flight in exchange for the free or reduced rate transportation. If the free or reduced rate air transportation is offered orally to potential volunteers, the carrier shall also orally provide a brief description of the material restrictions on that transportation at the same time that the offer is made.

11. Section 250.5 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

**§250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \* (See also § 250.9(c)).

\* \* \* \* \*

12. Section 250.10 is revised to read as follows:

**§ 250.10 Report of passengers denied confirmed space.**

(a) Each reporting carrier as defined in § 234.2 of this chapter and any carrier that voluntarily submits data pursuant to § 234.7 of this chapter shall file, on a quarterly basis, the information specified in BTS Form 251. The reporting basis shall be flight segments originating in the United States operated by the reporting carrier. The reports must be submitted within 30 days after the end of the quarter covered by the report. The calendar quarters end March 31, June 30, September 30 and December 31. “Total Boardings” on Line 7 of Form 251 shall include only passengers on flights for which confirmed reservations are offered. Data shall not be included for inbound international flights.

(b) For air transportation taking place on or after January 1, 2018, each reporting carrier and voluntary reporting carrier shall file a separate BTS Form 251 for all flight segments originating in the United States marketed under only the reporting carrier’s code, and operated by a code-share partner that is a certificated air carrier or commuter air carrier using aircraft that have a designed passenger capacity of 30 or more seats.

**PART 255 – [REMOVED AND RESERVED]**

13. Under the authority of 49 U.S.C. 40101, 40102, 40105, 40113, and 41712, part 255, is removed and reserved.



14. Part 256 is added to read as follows:

## **PART 256 – ELECTRONIC AIRLINE INFORMATION SYSTEMS**

Sec.

256.1 Purpose.

256.2 Applicability.

256.3 Definitions.

256.4 Prohibition on undisclosed display bias.

256.5 Minimum disclosure requirements for biased displays.

256.6 No requirement to provide access to systems.

Authority: 49 U.S.C. 40101 and 41712.

### **§ 256.1 Purpose.**

(a) The purpose of this part is to set forth requirements for the display of flight options by electronic airline information systems that provide air carrier or foreign air carrier schedule, fare, or availability information, including, but not limited to, global distribution systems (GDSs), corporate booking tools, and internet flight search tools, for use by consumers, carriers, ticket agents, and other business entities so as to prevent unfair or deceptive practices in the distribution and sale of air transportation.

(b) Nothing in this part exempts any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

### **§ 256.2 Applicability.**

(a) This part applies to any air carrier, foreign air carrier, or ticket agent that operates an electronic airline information system, e.g., GDS, corporate booking tool, or internet flight search

tool, that combines the schedules, fares or availability information of more than one air carrier or foreign air carrier for the distribution or sale in the United States of interstate or foreign air transportation.

(b) This part applies only if the electronic airline information system is displayed on a website marketed to consumers in the United States or on a proprietary display available to travel agents, business entities, or a limited segment of consumers of air transportation in the United States.

### **§ 256.3 Definitions.**

For purposes of this part:

*Availability* means information provided in displays with respect to the ability to make a reservation on a particular flight.

*Display* means the presentation of air carrier or foreign air carrier schedules, fares, or availability to a consumer or agent or other individual involved in arranging air travel for a consumer by means of a computer or mobile electronic device.

*Electronic airline information system or EAIS* means a system that combines air carrier or foreign air carrier schedule, fare, or availability information for transmission or display to air carriers or foreign air carriers, ticket agents, other business entities, or consumers.

*Integrated display* means any display that includes the schedules, fares or availability of more than one listed carrier.

### **§ 256.4 Prohibition on undisclosed display bias.**

Each air carrier, foreign air carrier, and ticket agent that operates an EAIS must comply with the requirements of this section.

(a) Each EAIS that uses any factor, not based on user selection or corporate contract travel arrangement, directly or indirectly relating to carrier identity in ordering the information

contained in an integrated display must clearly disclose as provided for in §256.5 that the identity of the carrier is a factor in the order in which information is displayed.

(b) An EAIS's integrated display must not give any carrier's flights a system-imposed preference over any other carrier's flights in that market based on carrier identity unless the preference is prominently disclosed as provided for in §256.5.

(c) Each EAIS must display information in an objective manner based on search criteria selected by the user (e.g., lowest fare, lowest total cost, date and time of travel, class of service, stopovers, total elapsed time or duration of travel, number of stops, limitations on carriers to be used, particular airport(s), number of passengers, etc.) When providing information in response to a search by a user of the EAIS, the EAIS must order the information provided so that the flight options that best satisfy the parameters of the user-selected search criteria are displayed conspicuously and no less prominently (e.g., in the same or larger font size and the same or more noticeable font color) than any other flight option displayed. Flight options may be presented in sequence, matrix, or other formats, but the flight options that best satisfy the parameters of the user-selected search criteria must be ranked in lists above other flight options, or identified more prominently than other flight options in a matrix or other format. This does not preclude systems from setting default display parameters that are not deceptive or offering users the option to choose a variety of display methods within those parameters.

#### **§ 256.5 Minimum disclosure requirements for biased displays.**

To the extent an EAIS engages in display bias based on carrier identity, it must clearly and conspicuously disclose that fact at the top of each search result display presented to the user in response to the user-selected search criteria. The notice must state that the flights are not

displayed in neutral order and that certain airlines' fare, schedule or availability information is given preferential treatment in how it is displayed.

**§ 256.6 No requirement to provide access to systems.**

Nothing in this section requires an air carrier, foreign air carrier, or ticket agent to allow a system to access its internal computer reservation system or to permit "screen scraping" or "content scraping" of its website; nor does it require an air carrier or foreign air carrier to permit the marketing or sale of the carrier's services through any ticket agent or other carrier's system.

"Screen scraping" as used in this paragraph refers to a process whereby a company uses computer software techniques to extract information from other companies' websites without permission from the company operating the targeted website.

**PART 257 - [AMENDED]**

15. The authority citation for part 257 continues to read as follows:

Authority: 49 U.S.C. 40113(a) and 41712.

**§ 257.3 [Amended]**

16. Section 257.3 is amended by removing the term "Transporting carrier" and adding "Operating carrier" in its place, removing the paragraph designations [(a) through (g)] from the definitions in this section, and placing the definition of "Operating carrier" in alphabetical order after the definition of "Long-term wet lease."

17. Section 257.5 is revised to read as follows:

**§ 257.5 Notice requirement.**

(a) *Notice in flight itineraries and schedules.* Each air carrier, foreign air carrier, or ticket agent providing flight itineraries and/or schedules for scheduled passenger air transportation to the public in the United States and to the Official Airline Guides and comparable publications, and, where applicable, computer reservation systems, shall ensure that each flight on which the designator code is not that of the operating carrier is clearly and prominently identified and contains the following disclosures. If there is more than one operating carrier for a particular flight (e.g., change of gauge), the required disclosures shall be made for each flight segment where the designator code is not that of the operating carrier.

(1) In flight schedule information provided by an air carrier, foreign air carrier, or ticket agent to U.S. consumers on desktop browser-based websites or applications in response to any requested itinerary search, for each flight in scheduled passenger air transportation that is operated by a carrier other than the one listed for that flight, the corporate name of the transporting carrier and any other name under which the service is held out to the public must appear prominently in text format, with font size not smaller than the font size of the flight itinerary itself, on the first display following the input of a search query, immediately adjacent to each code-share flight in that search-results list. Roll-over, pop-up and linked disclosures do not comply with this paragraph.

(2) In flight schedule information provided by an air carrier, foreign air carrier, or ticket agent to U.S. consumers on mobile browser-based websites or applications in response to any requested itinerary search, for each flight in scheduled passenger air transportation that is operated by a carrier other than the one listed for that flight, the corporate name of the transporting carrier must appear prominently in text format, with font size not smaller than the font size of the flight itinerary itself, on the first display following the input of a search query,

immediately adjacent to each code-share flight in that search-results list. Roll-over, pop-up and linked disclosures do not comply with this paragraph.

(3) For static written schedules, each flight in scheduled passenger air transportation that is operated by a carrier other than the one listed for that flight shall be identified by an asterisk or other easily identifiable mark that leads to disclosure of the corporate name of the operating carrier and any other name under which that service is held out to the public.

(4) Each air carrier and foreign air carrier that provides flight schedule information to any computer reservation system or global distribution system that receives and distributes the U.S. or foreign carrier's fare, schedule, or availability information shall ensure that each flight on which the designator code is not that of the operating carrier is clearly and prominently identified and the corporate name of the transporting carrier and any other name under which the service is held out to the public appears prominently in text format, with font size that is not smaller than the font size of the flight itinerary itself, immediately adjacent to each code-share flight in that search-results list.

(b) *Notice in oral communications with prospective consumers.* In any direct oral communication in the United States with a prospective consumer, and in any telephone call placed from the United States by a prospective consumer, concerning a flight within, to, or from the United States that is part of a code-sharing arrangement or long-term wet lease, a ticket agent doing business in the United States or a carrier shall inform the consumer, the first time that such a flight is offered to the consumer, or, if no such offer was made, the first time a consumer inquires about such a flight, that the operating carrier is not the carrier whose name or designator code will appear on the ticket and shall identify the transporting carrier by its corporate name and any other name under which that service is held out to the public.

(c) *Notice in ticket confirmations.* At the time of purchase, each selling carrier or ticket agent shall provide written disclosure of the actual operator of the flight to each consumer of scheduled passenger air transportation sold in the United States that involves a code-sharing arrangement or long-term wet lease. For any flight on which the designator code is not that of the operating carrier the notice shall state “Operated by” followed by the corporate name of the transporting carrier and any other name in which that service is held out to the public. The following form of statement will satisfy the requirement of this paragraph:

*Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express.* At the purchaser’s request, the notice required by this part may be delivered in person, or by fax, electronic mail, or any other reliable method of transmitting written material.

(d) In any written advertisement distributed in or mailed to or from the United States (including those that appear on an internet website that is marketed to consumers in the United States) for service in a city-pair market that is provided under a code-sharing arrangement or long-term wet lease, the advertisement shall prominently disclose that the advertised service may involve travel on another carrier and clearly indicate the nature of the service in reasonably sized type and shall identify all potential operating carriers involved in the markets being advertised by corporate name and by any other name under which that service is held out to the public. In any radio or television advertisement broadcast in the United States for service in a city-pair market that is provided under a code-sharing or long-term wet lease, the advertisement shall include at least a generic disclosure statement, such as “Some flights are operated by other airlines.”

## **PART 259 - [AMENDED]**

18. The authority citation for part 259 continues to read as follows:

**Authority:** 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

19. Section 259.8 is amended by revising the second sentence in paragraph (a) introductory text, and paragraph (a)(1), to read as follows:

**§ 259.8 Notify consumers of known delays, cancellations, and diversions.**

(a) \* \* \* A change in the status of a flight means, at a minimum, a cancellation, diversion or delay of 30 minutes or more in the planned operation of a flight that occurs within seven calendar days of the scheduled date of the planned operation. \* \* \*

(1) With respect to any U.S. air carrier or foreign air carrier that permits passengers and other interested persons to subscribe to flight status notification services, the carrier must deliver such notification to such subscribers, by whatever means the carrier offers that the subscriber chooses.

\* \* \* \* \*

**PART 399 – [AMENDED]**

20. The authority citation for part 399 continues to read as follows:

**Authority:** 49 U.S.C. 41712.

21. Section 399.80 is amended by removing and reserving paragraph (h) to read as follows:

**§ 399.80 Unfair and deceptive practices of ticket agents.**

\* \* \* \* \*

(h) [Reserved]

\* \* \* \* \*

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